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VOL. 55 MANILA, PHILIPPINES, OCTOBER 19, 1959 No. 42

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Adopted during the Fourth Congress of the Philippines
Second Session

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[CONCURRENT RESOLUTION No. 15]

CONCURRENT RESOLUTION CONCURRING IN PROCLAMATION NUMBERED FIVE HUNDRED SEVENTY-TWO OF THE PRESIDENT OF THE PHILIPPINES, DATED APRIL EIGHT, NINETEEN HUNDRED FIFTY-EIGHT, EXCLUDING FROM THE OPERATION OF THE RESOLUTIONS OF THE PHILIPPINE COMMISSION DATED JANUARY TWENTY-FIVE, NINETEEN HUNDRED SEVEN, AND AUGUST THIRTY, NINETEEN HUNDRED SIXTEEN, AND OPENING TO DISPOSITION UNDER THE PROVISIONS OF COMMONWEALTH ACT NUMBERED ONE HUNDRED THIRTY-SEVEN, AS AMENDED, A PARCEL OF LAND SITUATED WITHIN THE BAGUIO TOWNSITE RESERVATION.

WHEREAS, the President of the Philippines issued on April 8, 1958, the following proclamation:

"PROCLAMATION No. 572

"EXCLUDING FROM THE OPERATION OF THE RESOLUTIONS OF THE PHILIPPINE COMMISSION DATED JANUARY 25, 1907, AND AUGUST 30, 1916, AND OPENING TO DISPOSITION UNDER THE PROVISIONS OF COMMONWEALTH ACT NUMBERED ONE HUNDRED THIRTY-SEVEN, AS AMENDED, A PARCEL OF LAND SITUATED WITHIN THE BAGUIO TOWNSITE RESERVATION.

"WHEREAS, a petition has been filed for the release of a certain mineralized area from the Baguio Townsite Reservation established under Resolutions of the Philippine Commission dated January 25, 1907 and August 30, 1916;

"WHEREAS, according to the findings of the Director of Mines, concurred in by the Secretary of Agriculture and Natural Resources, the remaining area sought to be released from the Baguio Townsite Reservation appears to be highly mineralized and more valuable for its mineral contents and that mining operation thereon can be conducted safely at a depth below 600 feet without endangering the improvements existing on the surface;

"WHEREAS, under the provisions of section fourteen of Commonwealth Act Numbered One hundred and thirty-seven, as amended, otherwise known as the Mining Act, lands within the reservations for purposes other than mining, which, after such reservation is

made, are found to be more valuable for their mineral contents than for the purposes for which the reservation was made, may be withdrawn from such reservations by the President with the concurrence of the Congress of the Philippines;

"NOW, THEREFORE, upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provisions of section fourteen of Commonwealth Act Numbered One hundred and thirty-seven, as amended, otherwise known as the Mining Act, I, CARLOS P. GARCIA, President of the Philippines, do hereby release from the operation of the Resolutions of the Philippine Commission dated January 25, 1907 and August 30, 1916, the following described parcel of land and declare the same open to disposition under the provisions of the Mining Act, situated in the City of Baguio, Island of Luzon, to wit:

"Beginning at a point marked "1" on plan of the area sought to be released from the Baguio Townsite Reservation, being N. 5° 43′ E., 1,528.79 m. from Triangulation Circle, thence

'Due East, 973.00 m. to point "2"; thence
'Due south, 1,180.00 m. to point "B";
'Due West, 749.00 m. to point "4"; thence N. 10° 45′ W., L, 201.08 m. to point "1", which is the point of beginning.

'Containing an area of 101.5980 hectares.

'Bounded on the

'North: By mining claims of the Baguio Gold Mining Co.;
'East: By mining claims of the Baguio Gold Mining Co.;
'South: By mining claims of the Baguio Gold Mining Co.;
'West: By Baguio Townsite Reservation;

subject to the following conditions:

"That exploration and later mining or extraction of the ore should not be made at any point less than 600 feet downward from the surface;

"That any opening that may be made to the surface shall be as small as possible and for ventilation purposes only and may be made only upon the consent of the surface landowners or occupant;

"That if exploration will prove sufficient ore reserve to warrant development and later mining or extraction of the ore, cut and fill method of mining particularly filling with sand flashing should be adopted to minimize or reduce to naught any surface subsidence; and

"That the operator should be required to post bonds to answer for any possible damage that may be incurred by the surface landowners as a result of mining operation in the said area.

"This Proclamation shall take effect only upon the concurrence of the Congress of the Philippines.

"IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

"Done in the City of Manila, this 8th day of April, in the year of Our Lord, nineteen hundred and fifty-eight, and of the Independence of the Philippines, the thirteenth.

(Sgd.) CARLOS P. GARCIA
President of the Philippines

"By the President:

"(Sgd.) JUAN C. PAJO
"Executive Secretary"

WHEREAS, under section fourteen of Commonwealth Act Numbered One hundred thirty-seven, as amended, the aforesaid Proclamation Numbered Five hundred seventy-two shall not take effect until it is concurred in by a resolution of the Congress of the Republic of the Philippines, duly adopted for the purpose: Now, therefore, be it

Resolved by the Senate of the Philippines, the House of Representatives concurring, To concur in Proclamation No. 572 of the President of the Philippines, dated April 8, 1958, in accordance with the provisions of section 14 of Commonwealth Act No. 137, as amended.

Adopted, May 19, 1959.

S. Ct. R. No. 12

[CONCURRENT RESOLUTION NO. 16]

CONCURRENT RESOLUTION ENDORSING THE MONEY CLAIMS PRESENTED BY THE PHILIPPINES TO THE UNITED STATES AND EXPRESSING THE HOPE FOR THEIR EARLY SETTLEMENT.

WHEREAS, the Philippine Government is and, on several previous occasions, has been conducting negotiations with the United States for the settlement of certain claims for payment of amounts due the Philippines for various items;

WHEREAS, the settlement of these claims, in the opinion of the 1950 Bell Economic Mission, will greatly help the Philippines in carrying out its economic development program;

WHEREAS, in the opinion of the Congress of the Philippines, said claims are just and equitable, some of them having been recognized expressly by the Congress of the United States, others by competent officials of said government, and the rest being supported by undeniable facts on record;

WHEREAS, in the particular case of war damage claims, the payment of the claims was conditioned upon the amendment of the Philippine Constitution so as to grant to citizens of the United States the same rights as Filipino citizens in the acquisition and exploitation of natural resources, and the Filipino people have long since granted such rights as required, but the payment of our war damage claims has not until now been completed;

WHEREAS, the people and government of the Philippines are gratified over the favorable action taken by the United States Congress upon recommendation of President Eisenhower on the claim arising from gold devaluation, and hope that the other claims will likewise receive early favorable consideration from the Congress and President of the United States;

WHEREAS, while the Congress of the Philippines recognizes the sincere concern of the government and people of the United States to do justice and extend help to the Philippines as evinced in the action taken on the claim arising from gold devaluation, yet any further delay in the settlement of the other claims may be taken by the Filipino people as a denial of justice to a former ally, which impression should not be allowed to grow in the interest of both peoples; NOW, therefore, be it

Resolved by the Senate, with the concurrence of the House of Representatives, To express, as they hereby express, their solid endorsement of said claims, their gratification over the favorable action taken by the United States Congress upon the recommendation of President Eisenhower on the claim arising from gold devaluation, and their hope that the other claims will be settled within the shortest possible time, so that the same may be utilized for stabilizing the economy of our young republic and so as to forestall any deterioration in Philippine-American relations which might result from further delay in the settlement of said claims.

Adopted, May 20, 1959.

Adopted during the Fourth Congress of the Philippines Second Special Session

S. Jt. R. No. 2

[JOINT RESOLUTION NO. 1]

JOINT RESOLUTION CREATING A TEMPORARY COMMISSION TO WORK WITH AND ASSIST THE COMMISSION TO BE ESTABLISHED BY THE GOVERNMENT OF THE UNITED STATES TO STUDY THE VETERANS' PROGRAM OF THE UNITED STATES IN THE PHILIPPINES.

WHEREAS, Filipino veterans who served under the Armed Forces of the United States are still denied a substantial number of benefits made available to other veterans of the United States Armed Forces;

WHEREAS, Congresswoman Edith Nourse Rogers of Massachusetts, on March 12, 1959, introduced a Joint Resolution (House Joint Resolution Numbered Three hundred seven, eighty-six U. S. Congress) establishing a temporary Commission to study the veterans' program of the United States in the Philippines;

WHEREAS, in order to facilitate the work of the proposed United States Commission in conducting a thorough study and investigation of the Philippine veterans' claims and problems, and in order to provide better assurance that

its recommendations would be acceptable to both governments, it is necessary to create a counterpart Philippine Commission to work with and assist said United States Commission;

WHEREAS, the introduction of the Joint Resolution in the United States Congress is a good manifestation of the sincere desire on the part of the United States Government to do justice to its loyal ally during the past World War; and

WHEREAS, it behooves the Philippine Government to extend its whole-hearted cooperation in solving the veteran's problem by creating the counterpart Commission, so that the Philippine side in these problems may be properly presented; Now, therefore, be it

Resolved as it is hereby resolved by the Senate and House of Representatives of the Philippines in Congress assembled; That:

SECTION 1. There is hereby created a Commission on Filipino Veterans Benefits, which shall hereinafter be referred to as the "Commission", composed of a Chairman and four members to be appointed by the President of the Philippines, with the consent of the Commission on Appointments. This Commission shall serve as a counterpart of a similar Commission to be established by the Government of the United States. Any vacancy in the Commission shall be filled in the same manner in which the original appointment was made. Three members of the Commission shall constitute a *quorum.*

SEC. 2. The Commission shall have the following powers and duties:

(1) To work with and assist the counterpart Commission to be created by the United States Government in conducting a thorough and comprehensive investigation and study of the entire veterans' program of the United States in the Philippines with a view to determining a just and equitable solution of the problems relating to or growing out of such program;

(2) It shall present to the United States Commission the Philippine veterans' claims and the problems encountered by the Philippine veterans in connection with the settlement and entitlement to the rights, privileges and benefits which the laws of the United States grant to veterans of the Armed Forces of the United States, together with such recommendations as it might deem appropriate;

(3) It shall submit to the President and to the Congress of the Republic of the Philippines a full report of its activities and its accomplishments together with such recommendations as it may deem appropriate within sixty (60) days after its counterpart Commission of the United States shall have submitted its report to the President and to the Congress of the United States;

(4) It shall appoint its own personnel and fix their compensation subject to the Civil Service laws, rules and regulations;

(5) It is authorized and empowered: to hold hearings; take sworn testimonies; issue *subpoena* and *subpoena duces tecum* to compel the attendance of witnesses or the production of documents before it; sit and act at such time and place (within the Republic of the Philippines or in the United States) as it may deem advisable and necessary; and may require any official or employee of any bureau, office, branch, subdivision, agency or instrumentality of the government to assist or otherwise cooperate with it in the performance of its functions and duties;

(6) It may secure directly from any department, agency or establishment of the government information, statistics, data, suggestions and other matters to carry out the purposes of this Joint Resolution and such department, agency or establishment are hereby directed to comply with such request;

(7) It shall be the only Commission authorized to negotiate or work in behalf of the Philippine government for the benefits of the Philippine veterans from the Government of the United States.

SEC. 3. Each member of the Commission shall receive twenty-five pesos per diem while engaged in the performance of his duties plus reimbursement for travel and other necessary expenses incurred by him in the performance of such duties.

SEC. 4. Thirty days after the submission of its report to the President and to the Congress of the Republic of the Philippines as required by paragraph three, section two of this Joint Resolution, the Commission shall cease to exist.

SEC. 5. The power of the Commission created under Republic Act Numbered Eighteen hundred eighty-nine, "to work and make negotiations for more benefits for Filipino veterans from the Government of the United States in conjunction with such other diplomatic or other agencies of the Philippine Government working in favor of veterans", as well as paragraphs three and four of section two of said Act (Republic Act Numbered Eighteen hundred eighty-nine) are hereby repealed.

All other Acts or parts of Acts inconsistent with the provisions of this Joint Resolution are hereby repealed, amended or modified to conform with the provisions of this Joint Resolution.

SEC. 6. The sum of two hundred thousand pesos or so much thereof as may be necessary to carry into effect the purposes of this Joint Resolution, is hereby appropriated out of the funds in the Treasury of the Philippines, not otherwise appropriated.

SEC. 7. When the United States Commission provided for in House Joint Resolution Numbered Three hundred seven (86th U. S. Congress), shall have been created and formed, such fact shall be made known by a proclamation by the President of the Philippines and this Joint Resolution shall take effect on the date of said proclamation.

Approved, July 20, 1959.

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

Department of Justice

OFFICE OF THE SOLICITOR GENERAL

ADMINISTRATIVE ORDER No. 158

October 5, 1959

AUTHORIZING DISTRICT JUDGE ROBERTO ZURBANO OF CAGAYAN TO TAKE CHARGE OF THE FIRST BRANCH OF SAID PROVINCE.

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act 296, as amended, the Honorable Roberto Zurbano, District Judge of Cagayan, 2nd Branch, is hereby authorized, in addition to his regular duties, to take charge of the 1st Branch thereof, effective immediately and until further advice, for the purpose of hearing and deciding all urgent cases pertaining thereto.

ALEJO MABANAG
Secretary of Justice

ADMINISTRATIVE ORDER No. 159

September 30, 1959

APPOINTING TEMPORARILY CITY ATTORNEY LEON AQUINO OF CABANATUAN CITY AS ACTING PROVINCIAL FISCAL OF NUEVA ECIJA.

In the interest of the public service, pursuant to the provisions of section 1679 of the Revised Administrative Code and in accordance with Resolution No. 612 dated July 30, 1959 of the Provincial Board of Nueva Ecija, Mr. Leon Aquino, City Attorney of Cabanatuan City, is hereby temporarily appointed, in addition to his regular duties, Acting Provincial Fiscal of Nueva Ecija, with compensation as provided for by law for the said position, from February 14, 1952 to February 8, 1954, during the absence on temporary detail to the Department of Justice of the regular Provincial Fiscal thereof.

This supersedes Administrative Order No. 26, dated February 14, 1952.

ALEJO MABANAG
Secretary of Justice

ADMINISTRATIVE ORDER No. 160

October 3, 1959

AUTHORIZING DISTRICT JUDGE ENRIQUE MAGLANOC OF QUEZON TO HOLD COURT IN INFANTA AND POLILLO.

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act 296, as amended, the Honorable Enrique Maglanoc, District Judge of Quezon, 2nd Branch, is hereby authorized to hold court at Infanta and Polillo, same province, effective October 5, 1959, or soon thereafter as practicable, for the purpose of trying all kinds of cases and to enter judgments therein.

ALEJO MABANAG
Secretary of Justice

ADMINISTRATIVE ORDER No. 161

October 6, 1959

TERMINATING THE DESIGNATION OF ATTYS. JUANITO CABALUNA, FRANCISCO MERCADO, AND BERNARDO K. SANCHEZ, AS SPECIAL COUNSELS IN CEBU CITY.

In the interest of the public service, the designations of Messrs. Juanito Cabaluna, Francisco Mercado and Bernardo K. Sanchez, Attorneys in the Office of the City Mayor of Cebu as Special Counsels to assist the City Fiscal of Cebu in the prosecution of all crimes committed within the jurisdiction of the said City under Administrative Order No. 83, series of 1959, pursuant to section 1686 of the Revised Administrative Code, as amended, is hereby terminated immediately. The City Fiscal of Cebu is directed to take over immediately all cases being handled by said designated Special Counsels.

ALEJO MABANAG
Secretary of Justice

APPOINTMENTS AND DESIGNATIONS

BY THE PRESIDENT OF THE PHILIPPINES

Ad Interim Appointments

September 1959

Amando Bugayong as Associate Judge of the Court of Industrial Relations, September 1.

Octavio R. Ramirez as Solicitor in the Office of the Solicitor General, September 15.

Bienvenido Valera as Member of the Board of Directors of the Philippine Tobacco Administration, September 15.

Francisco B. Albano, Jr., as Member of the Board of Directors of the Philippine Tobacco Administration, September 15.

Luis A. Flores as Chairman and Tobias P. Marcelo as Member of the Board of Mechanical Engineering Examiners, September 22.

Jaime M. Lantin as Solicitor in the Office of the Solicitor General, September 22.

Santiago O. Mantes as Provincial Assessor of Zambales, September 26.

Domingo R. Calub as Provincial Treasurer of Mountain Province, September 26.

Ricardo Iturralde as Assistant Provincial Fiscal of Pampanga, September 26.

Pedro S. David as Second Assistant Provincial Fiscal of Pampanga, September 26.

Antonio V. Rito as Justice of the Peace of Rapu-Rapu, Albay, September 26.

Ramal Tomindog as Justice of the Peace of Marantao, Lanao del Sur, September 26.

Ambrosio Magsaysay as Chairman of the Board of Direcotrs of the National Waterworks and Sewerage Authority, September 26.

Sheik Cosain Naga as Provincial Assessor of Lanao del Sur, September 26.

Restituto Abaca as Justice of the Peace of Aborlan, Palawan, September 26.

Serafin R. Cuevas, Manuel R. Pamaran, Esteban M. Lising, Narciso Castañeda, Jr., Milagros V. Caquioa, Lorenzo P. Magtutu, Leandro V. Infantado, Agapito G. Magpantay, Donato M. Guevara, Pedro Ma. Sison, Jr., Avelino B. Concepcion, Marcos Valentin, Jr., Roberto D. Cabrera, Luis B. Angeles, and Guillermo F. Lim as Assistant Fiscals of Manila, September 26.

Enrique J. L. Ruiz as Member of the Board of Directors of the People's Homesite and Housing Corporation, September 30.

October 1959

Felix Bilan as Assistant Fiscal of Manila, October 9.

HISTORICAL PAPERS AND DOCUMENTS

STATEMENT OF PRESIDENT GARCIA ON INAUGURATING THE UPI RADIO TELETYPE SERVICE, OCTOBER 17, 1959

THE ESTABLISHMENT of a radioteletype circuit to serve primarily Asian countries ushers in a new era in multination exchange of communication. It is a history-making step toward the attainment of closer association and more active cooperation among governments and peoples of Asia. The service to be rendered by this new circuit will make for faster dissemination of information and, consequently, better understanding among nations of the region. It will be an invaluable service to the cause of international peace and harmony.

Asia today is a new Asia in the eyes of the world. Since their emergence from colonial status soon after the termination of the last world war, Asian nations have taken active participation in world affairs. Asia's role in international activities is helped into prominence by the circumstance that in recent years the region has been the seat of events which drew into focus the attention of the entire world. The war in Korea, the bloody armed conflict in Indo-China, the bombardment of the islands off the coast of mainland China, the rebellion in Indonesia, the Pathet Lao uprising in Laos, the Tibetan affair, the current Sino-Indian border controversy—all these have served to attract international attention to this part of the world.

Asia has a definite place in international affairs. It necessarily has to play a significant part in the conduct of international relations. Being the home of more than half of the world's population, its peoples should be kept abreast of international developments and human progress through an effective communication. And the radioteletype circuit will be of immense help in this regard.

The Philippines feels highly elated over the selection of Manila as the site of the circuit headquarters. It has a good reason for being proud of the selection. For this honor, we are very thankful to United Press International.

The new enterprise will be a useful contribution to the work of carrying out our policy of further strengthening our relations with our Asian neighbors. It will be a distinct achievement of United Press International, for which we wish the best of success.

DECISIONS OF THE SUPREME COURT

[No. L-10679. November 29, 1958]

ABELARDO PAGES, plaintiff and appellant, *vs.* BASILAN LUMBER COMPANY, defendant and appellee

OBLIGATIONS AND CONTRACTS; ABSENCE OF PERIOD WITHIN WHICH OBLIGOR MAY PERFORM THE OBLIGATION; WHEN OBLIGEE MAY DEMAND PERFORMANCE.—When there is no time limit fixed for the performance of the obligation, the obligee may not ask for the performance of the obligation without first asking for the fixing by the court of the period or term within which the obligor must comply with his obligation. The period should first be determined, because in the absence of such term or period, there can be no breach of contract or failure to perform the obligation.

APPEAL from an order of the Court of First Instance of Cebú. Nolasco, *J.*

The facts are stated in the opinion of the Court.

Villena & Almeda, and *Briones, Duterte, Yap, Gillamac, Rubillos and Montecillo* for plaintiff and appellant.

Ramón A. Lumabao and *Peláez, Peláez & Peláez* for the defendant and appellee.

MONTEMAYOR, *J.:*

This is an appeal from the order of the Court of First Instance of Cebu, dismissing the complaint filed by plaintiff Abelardo Pages against the Basilan Lumber Company, for breach of contract and for damages, ₱1,080,000.00 as compensatory damages, ₱500,000.00 as moral damages, ₱8,000.00 for the value of the logs which the defendant allegedly refused to buy or to pay for, and ₱150,000.00 as attorney's fees, including the amount of ₱183,155.55 as the value of the units and equipment said to belong to the plaintiff in case of failure to deliver the same.

After plaintiff-appellant had presented his evidence and rested his case, defendant-appellee moved for the dismissal of the complaint on the ground that the plaintiff had no cause of action against it, that the contract sued upon was void and invalid, since it did not express the true intent of the parties, and the cause and consideration was contrary to law and the existing rules and regulations of the Bureau of Forestry. The trial court granted the motion and dismissed the complaint on the same grounds alleged by the defendant.

The contract involved (Exhibit B) was entered into between the parties on September 4, 1950. For purposes of reference, we reproduce the pertinent portions thereof:

"1. Party of the First Part is the sole proprietor of the Port Santa Maria Lumber located at Siocon, Zamboanga, holding Forest License No. TWENTY-FOUR-F, (24-F) from the Bureau of Forestry, Manila, Philippines;

"2. Party of the First Part does hereby agree and bind himself, his heirs and administrators to sell, within the terms of this agreement, all the logs which are, or may be, produced from the forestry area described under the above mentioned license at the following prices based upon the Bureau of Forestry monthly scale report:

(*a*) EIGHT (₱8.00) PESOS, Philippine Currency, per cubic-meter of export logs;

(*b*) FOUR (₱4.00) PESOS, Philippine Currency, per cubic-meter of mill logs.

(*c*) FIFTEEN (₱15.00) PESOS, Philippine Currency, per Cubic-Meter of group one species.

* * * * * * *

"3. Party of the Second Part does hereby agree and bind itself to buy and purchase from Party of the First Part all the logs which may be produced at the Port Santa Maria Lumber within the term of this agreement at the prices and under the conditions mentioned in Paragraph 2 hereof;

"4. The term of this agreement shall be for a period of ten (10) years counted from the date of approval hereof by the Bureau of Forestry. Thereafter, it shall be renewed yearly. Provided, however, that this term shall be subordinated and subject to the period during which the Party of the First Part shall continue to hold a license from the Bureau of Forestry regarding the forest area, under which license Party of the First Part prensently operates;

"5. In order to speed up and facilitate logging operations at the Port Santa Maria Lumber by Party of the First Part, Party of the Second Part does hereby agree and bind itself to transport all necessary units belonging to Party of the First Part to the Basilan Lumber Company, Isabela, Basilan City, for overhaul and repair without costs to Party of the First Part. Any addition and improvement which party of the Second Part may place on said units shall become the property of the Party of the First Part;

"6. In order to further facilitate log production, Party of the Second Part does agree and bind itself to send technical men within a reasonable time and as necessary, and to move equipments belonging to the Basilan Lumber Company to the Abelardo Pages License forest area. These equipments shall remain the property of the Party of the Second Part. This shall be in consideration of all saw-mill facilities, equipments, shop tools and machineries which Party of the First Part shall turn over to Party of the Second Part as loan during all the time this contract is in effect;

"7. Party of the Second Part will advance and deliver to Party of the First Part the sum of TEN THOUSAND (₱10,000.00) PESOS Philippine Currency, upon approval hereof by the Director of the Bureau of Forestry, Manila, as advance payment against log deliveries from the Abelardo Pages forest area.

* * * * * * *

"9. The logging operational expenses shall be for the account of the Party of the First Part. The Party of the Second Part shall, however, reimburse and pay to Party of the First Part whatever sums of money be may have spent on account thereof during a monthly accounting period:

"10. It shall be understood that the reimbursements contemplated and referred to in paragraph nine (9) hereof, shall be in addition to the purchase price mentioned and referred to in paragraphs two (2) and three (3) hereof. In other words, the total consideration which will be paid for the logs shall be the operational costs plus the amount which may be paid for the logs as contemplated in paragraph two (2) hereof."

The plaintiff is the grantee or owner of a lumber concession, given by the Bureau of Forestry, of a forest area in Siocon, Zamboanga, and was licensed to operate it under the name of Port Santa Maria Lumber. The defendant is a corporation with its principal office at Basilan City, and is presumably engaged in the lumber business and possesses machinery and equipment used in said business. It would appear that there was a preliminary agreement, Exhibit A, between the parties before the execution of the contract, Exhibit B. Under this preliminary agreement, the Basilan Lumber Company was to operate the lumber concession of the plaintiff and actually conduct logging operations with its own equipment, all at its own expense. When this agreement was submitted to the Bureau of Forestry, the latter objected to it, saying that according to its rules and regulations, only the licensee or concessionaire is allowed to conduct logging operations within the concession; that if the plaintiff wanted to retain the license in his name, and he needs machinery or equipment and technical men belonging to another party, he should lease said machinery and equipment and hire the technical men to operate the concession, but that said technical men must be employed by the concessioner himself. This evidently was the reason why the contract, Exhibit B, in order to be approved by the Director of Forestry, which in fact was approved, made it appear that the plaintiff himself was going to operate the concession and conduct logging operations and was to finance the same, although eventually, it would be reimbursed by the defendant for its operational expenses, the same to be in addition to the cost of the logs to be bought by the defendant; that the defendant was not only to lend its equipment for the use in the logging operations, but it would even overhaul and repair the equipment of the plaintiff by transporting the same to its compound and shops in Basilan. From this, the trial court correctly found that Exhibit B did not express the true intent of the parties; that it was simulated, and that as a matter of fact, from the time of the execution of the contract, Exhibit B, or shortly thereafter, about December, 1950, up to June, 1952, when logging operations were suspended, it was the Basilan Lumber Company that actually conducted logging operations and financed said operations, this being the real intention and agree-

ment of the parties, the plaintiff never advancing or paying any of the said operational expenses; all contrary to the rules and regulations of the Bureau of Forestry and the policy of the Government, and contrary to what the Director of Forestry was given to understand by the parties.

In suing on the contract, Exhibit B, and in his effort to prove breach thereof, the plaintiff introduced evidence to the effect that about the month of June, 1952, the defendant removed from the logging area logging and hauling equipment, which it never returned to the same, and withdrew its technical men, thereby stopping operations. As to the technical men, it will be remembered that one of the conditions imposed by the Director of Forestry in the approval of the contract, Exhibit B, was that technical men needed by the plaintiff should be hired by him so that they would be under his employment and control. The plaintiff, however, never hired said technical men, but were merely supplied, presumably, free, to him, contrary to the understanding between the Bureau of Forestry and the plaintiff. Again, according to the communications exchanged between plaintiff and the defendant after June, 1952, it would appear that said logging and hauling equipment were removed from the logging area with the knowledge and consent of the plaintiff and taken to Basilan for purposes of repair and overhauling, in accordance with the contract, Exhibit B.

The communication of the defendant to the plaintiff marked as Exhibit D, showed that the defendant never intended to abandon the logging operations, because it had invested considerable amount of money in the same, only that because future logging operations would cover the hilly portions of the area, a resurvey had to be made, besides the fact that during the rainy season from July to about December, the weather and the conditions of the ground were not favorable for logging operations. This, in addition to the fact that the typhoon that passed over the area had considerably damaged some of the equipment.

Another point raised by the defendant and favorably discussed by the trial court in its order of dismissal, is that although according to the contract, the defendant promised to buy all the logs produced and made ready for sale by the plaintiff, there was no period of time or limit fixed for said purchase, neither was there a time limit or period which was agreed upon by the parties as regards the logging operations actually to be conducted by the defendant, naturally, not under the contract, Exhibit B, which did not provide for such logging operations by the defendant, but even according to their own private under-

standing. Naturally, when there is no time limit fixed, plaintiff cannot well demand performance of the obligation.

But the plaintiff in his brief claims that the trial court should have fixed the period, if no period was fixed in the agreement. It seems that this point was never raised before the trial court, and he is not allowed now to raise this point before us. Furthermore, plaintiff may not ask for the performance of the obligation without first asking for the fixing by the court of the period or term. The period should first be determined, because in the absence of such term or period, there can be no breach of contract or failure to perform the obligation. In the case of Ungson *vs.* Lopez, 50 Off. Gaz. 4297, 4299–4300, citing the case of Concepcion *vs.* People of the Philippines, 74 Phil. 63, and Gonzales *vs.* De Jose, 66 Phil. 369, citing Article 1128 of the Old Civil Code (now Article 1197 of the New Civil Code), this Court said:

"On obligations coming within the purview of the above cited provision the only action that can be maintained is that to ask the court to determine the term within which the obligor must comply with his obligation for the reason that the fulfillment of the obligation itself cannot be demanded until after the court has fixed the period for its compliance and such period has arrived."

With respect to the logs amounting to 2,000 cubic feet, which defendant supposedly failed or refused to purchase, although ready for sale, plaintiff himself admitted that logs to be bought by the defendant must be placed at the seashore, and after the necessary scaling thereof by the forest officer; however, the logs in question were still up in the mountains or the forest where they had been cut and had not yet been scaled. Consequently, defendant was not yet called upon to make the purchase.

Considering the facts and circumstances in the case, we agree with the trial court. The appealed order dismissing the complaint is hereby affirmed, with costs.

Parás, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepción, Reyes, J. B. L., and *Endencia, JJ.,* concur.

Order affirmed.

[No. L-12077. June 27, 1958]

EMMANUEL C. ONGSIAKO, ET AL., plaintiffs, *vs.* THE WORLD WIDE INSURANCE & SURETY CO., INC., ET AL., defendants. THE WORLD WIDE INSURANCE & SURETY CO. INC., cross-claimant and appellant, *vs.* CATALINA DE LEON, cross-defendant and appellee.

SURETY-SHIP AND GUARANTY; UNFAIR AND UNREASONABLE STIPULATION IN THE BOND; EFFECT.—Where one of the conditions of the bond filed by the surety provides that the latter's "liability will expire on the date of the maturity of the obligation," which it interposed as a defense to an action instituted therefor, such stipulation is unfair and unreasonable for it practically nullifies the nature of the undertaking it had assumed. The court has noted this reprehensible attitude adopted by the surety company in the case at bar by resorting to improper means in an effort to evade its responsibility under the law. An instance of such attitude is the insertion in the bond of a provision which in essence tends to nullify its commitment. This is a subtle way of making money thru trickery and deception. Such practice should be stopped if only to protect honest dealers or people in financial stress. Because of such improper conduct, the appeal taken in the case at bar is considered frivolous and unnecessary.

APPEAL from a judgment of the Court of First Instance of Manila. Narvasa, *J.*

The facts are stated in the opinion of the Court.

Villareal & Amacio for the cross-claimant and appellant.

Mariano M. Magsalin and *Macario L. Nicolás* for cross-defendant and appellee.

BAUTISTA ANGELO, *J.:*

On November 10, 1951, Catalina de Leon executed in favor of Augusto V. Ongsiako a promissory note in the amount of ₱1,200.00, payable ninety (90) days after date, with interest at 1 per cent per month. On the same date, a surety bond was executed by Catalina de Leon, as principal, and the World Wide Insurance & Surety Co., Inc., as surety, whereby they bound to pay said amount jointly and severally to Augusto V. Ongsiako. As the obligation was not paid on its date of mautrity either by Catalina de Leon or by the surety notwithstanding the demands made upon them, Ongsiako brought this action on March 6, 1953 in the Municipal Court of Manila to recover the same from both the principal and the surety. Judgment having been rendered for the plaintiff, both defendants appealed to the court of first instance. In the latter court, Catalina de Leon failed to answer and so she was declared in default. In due time the surety company filed its answer setting up a counterclaim against plaintiff and a cross-claim against its co-defendant.

After hearing, the court rendered judgment ordering Catalina de Leon to pay plaintiff the sum of ₱1,200.00, with interest at the rate of 1 per cent per month from February 10, 1952, and the sum of ₱300.00 as attorneys' fees, and costs. Defendant surety company was likewise ordered to pay to plaintiff the same judgment but with the *proviso* that "execution should not issue against defendant The World-Wide Insurance & Surety Co., Inc., until a return is made by the Sheriff upon execution against defendant Catalina de Leon showing that the judgment against her remained unsatisfied in whole or in part; and provided, further, that defendant Catalina de Leon shall reimburse to defendant Company whatever amount the latter might pay under this judgment together with such expenses as may be necessary to effectuate said reimbursement." From this judgment, the surety company appealed and the case is now before us because, as certified by the Court of Appeals, it only involves questions of law. Augusto V. Ongsiako, having died in the meantime, was substituted by his special administrators Emmanuel Ongsiako and Severino Santiangco.

The surety bond in question was executed on November 10, 1951 and among the important provisions it contains is the following: that the principal and the surety "are held and firmly bound unto Dr. Augusto V. Ongsiako in the sum of Pesos One Thousand Two Hundred Pesos (₱1,200.00), Philippine Currency, for the payment of which well and truly to be made, we bind ourselves * * * jointly and severally, firmly by these presents" (and referring to the Promissory Note) "whose terms and conditions are made parts hereof." In said bond there also appears a special condition which recites: "The Liability of The World-Wide Insurance & Surety Co., Inc., under this bond will expire on February 10, 1952." The note therein referred to, on the other hand, provides that the obligation is payable ninety days from date of issue, November 10, 1951, which means that its date of maturity is February 10, 1952. The evidence shows that neither the principal nor the surety paid the obligation on said date of maturity and immediately thereafter demands for payment were made upon them. Thus, it appears that as early as February 12, 1952, or two days thereafter, the creditor wrote to the surety company a letter notifying it of the failure of its principal to pay the obligation and requesting that it make good its guaranty under the bond (Exhibit B), which demand was reiterated in subsequent letters (Exhibits C, D and E). To these demands, the company merely set up the defense that it only acted as

a guarantor and as such its liability cannot be exacted until after the property of the principal shall have been exhausted (Exhibit G).

It therefore appears that appellant has no justification whatever to resist the claim of the plaintiff for in the judgment appealed from it is precisely provided that execution of judgment should not issue against it until after it is shown that the execution of the judgment against the principal has been returned by the sheriff unsatisfied, which was the only excuse given by said appellant in not fulfilling its commitment under the bond. And yet it appealed from said judgment just to put up the additional defense that its liability under the bond has already expired because of the condition that its liability shall expire on February 10, 1952. Even if this were true, we consider however this stipulation as unfair and unreasonable for it practically nullifies the nature of the undertaking assumed by appellant. It should be noted that the principal obligation is payable ninety days from date of issue, which falls on February 10, 1952. Only on this date can demand for payment be made on the principal debtor. If the debtor should fail to pay and resort is made to the surety for payment on the next day, it would be unfair for the latter to allege that its liability has already expired. And yet such is the stand taken by appellant. As the terms of the bond should be given a reasonable interpretation, it is logical to hold that the liability of the surety attaches as soon as the principal debtor defaults, and notice thereof is given the surety within reasonable time to enable it to take steps to protect its interest. This is what was done by appellee in the present case. After all, the surety has a remedy under the law which is to foreclose the counterbond put up by the principal debtor. This is in effect what was done by the lower court.

This Court has taken note of the reprehensible attitude adopted by the surety company in this case by resorting to improper means in an effort to evade its clear responsibility under the law. An instance of such attitude is the insertion in the bond of a provision which in essence tends to nullify its commitment. This is a subtle way of making money thru trickery and deception. Such practice should be stopped if only to protect honest dealers or people in financial stress. Because of such improper conduct, this Court finds no justification for the present appeal and considers it frivolous and unnecessary. For this, appellant should be made to pay treble costs.

WHEREFORE, the decision appealed from is affirmed, with treble costs against appellant.

Bengzon, Concepción, Reyes, J. B. L., Endencia, and *Félix, JJ.,* concur.

Parás, C. J., Montemayor, and *Reyes, A., JJ.,* in the result.

Judgment affirmed.

[No. L-11036. May 23, 1958]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* FLORENTINO TOLENTINO, ET AL., defendants and appellants.

1. BAIL BOND; LIABILITY OF BONDSMEN FOR FAILURE TO PRODUCE ACCUSED; MITIGATION OF LIABILITY AFTER ACCUSED IS SURRENDERED.—Where the period given to the bondsmen to produce the accused had elapsed and the accused had not been brought before the court, the sureties can not be completely discharged. However, where, even after judgment against the bond had become final and executory, the purpose thereof has been accomplished by the capture and surrender of the accused, the liability of the sureties may, in the discretion of the court, be reduced or mitigated.

2. ID.; ID.; OBLIGATION OF BONDSMEN SOLIDARY; OBLIGOR WHO PAYS MAY DEMAND CONTRIBUTION FROM HIS CO-OBLIGORS.—The obligation of the bondsmen under the bond is solidary; hence, each one of them is liable for the entirety of the obligation, which the government, as creditor, may elect to collect from any number of them. However, those who pay may in turn demand from their co-obligors their corresponding proportional share, by way of contribution (Articles 1216 and 1217, New Civil Code).

3. ID.; ID.; REDUCTION OF LIABILITY OF A BONDSMAN; EFFECT ON SOLIDARY OBLIGORS.—The reduction of the liability of one of the bondsmen constitutes a remission of the rest of his share in the bond and the release accrues *pro tanto* to the benefit of the other solidary obligors (8 Manresa, 214–215). But it does not operate to discharge the entire obligation in the absence of any intent to do so, for solidary guaranties, like that of bail bonds, are subject to the rules of solidary obligations (Art. 2047, New Civil Code).

APPEAL from orders of the Court of First Instance of Isabela. Arranz, *J.*

The facts are stated in the opinion of the Court.

Solicitor General Ambrosio Padilla and *Solicitor Rafael P. Caniza* for the plaintiff and appellee.

Quintín B. Alcid for bondsmen and appellants.

REYES, J. B. L., *J.:*

Florentino Tolentino was, together with three other persons, accused in the Court of First Instance of Isabela with the crime of murder (Criminal Case No. 759), and to secure his provisional release, a bail bond in the amount of ₱25,000 was, on March 16, 1950, posted in his favor by Agustin Bersamin, Marcelina Cabrero, Nicolas F. Garcia, Donato Tolentino, Eduardo Salvador, Damaso Tolentino, Presentacion Baldonado, Mariano Tolentino, Marcos Soliven, Feliciano Baldonado and Francisco Legaspi.

On July 13, 1950, the criminal case was called for trial and because the accused Florentino Tolentino failed to appear, the lower court issued an order giving his bonds-

men five days to explain why their bond should not be confiscated, and postponing the trial to August 21, 1950. On June 12, 1951, the court ordered the confiscation of Tolentino's bail bond, giving the bondsmen thirty days within which to produce the body of the accused, otherwise judgment would be rendered for the execution of the bond. A year later, the provincial fiscal moved for the execution of the bond and on December 24, 1952, the lower court ordered its execution.

On February 16, 1953, counsel for Tolentino's bondsmen filed a motion for the reconsideration of the order to execute the bond on the ground that Tolentino had died on October 27, 1952 in an armed encounter between a patrol of the Philippine Army and some Huks in the vicinity of Sta. Lucia, Magalang, Pampanga, but the court denied the motion for the reason that death of the accused after judgment against the bail bond had become final does not release the sureties. Whereupon, on September 15, 1953, the provincial fiscal asked for the issuance of a writ of execution against the bondsmen, and pursuant thereto, the court issued a writ of execution on October 2, 1953 in accordance with which the sheriff advertised for sale at public auction the properties given by the bondsmen as security.

Before the execution sale could take place, however, several incidents occured in the case, namely: (*a*) the heirs of bondsman Mariano Tolentino, who had died during the pendency of the case, filed a petition in court for the exclusion of the properties of the deceased included in the notice of sale on the ground that notices of the orders of confiscation and execution of the bail bond could not have been validly served upon the deceased Mariano Tolentino because he had died before said orders were issued by the court; (2) bondsman Francisco Legaspi moved for the exclusion of his residential house from the lot given by him as security for the bond, alleging that said house was never given by him as security; and (3) one Nicolasa Garcia moved to exclude lots 4179 and 595 of the Santiago Cadastre from the execution sale on the ground that they belonged to her and not to bondsman Nicolas Garcia. In view of the pendency of these motions, the court postponed the auction sale indefinitely until said motions would have been studied and resolved.

On December 19, 1953, the accused Florentino Tolentino was apprehended in the province of Cagayan and immediately brought before the court *a quo* by his bondsmen, who all prayed for the lifting of the orders of confiscation and execution of their bail bond, but the motion was denied by the court. The court had, in the mean-

time, released from the order of execution the two lots claimed by Nicolasa Garcia which it found to belong to this claimant and not to bondsman Nicolas Garcia.

On October 6, 1955, the bondsmen filed another motion to reconsider the orders of forfeiture and execution of their bond, giving as reason for their inability to produce the accused on the dates ordered by the court the fact that he went into hiding because of a certain threat against his life. Again the court denied the motion for reconsideration; but in the same order, it released from the notice of execution sale the house which bondsman Francisco Legaspi claims should be excluded therein, having found that said house was constructed only after the bail bond was posted and consequently, could not have been given by Legaspi as security therefor; and with respect to the motion of the heirs of bondsman Mariano Tolentino, the court found that Tolentino had already died before the issuance of its orders of forfeiture and execution of the bail bond so that he could not have been validly notified thereof, and so set aside the order of execution with respect to the properties belonging to the estate of Mariano Tolentino. The other bondsmen sought reconsideration of this last order, which the court denied. Wherefore, four of the bondsmen, namely, Marcelina Cabrero, Agustin Bersamin, Donato Tolentino, and Feliciano Baldonado appealed to this Court.

Appellants assign two errors allegedly committed by the trial court, to wit:

1. The lower court erred in not remitting the forfeiture of the bailbond upon application of the bondsmen on the ground that they have captured the accused and presented him before the court.
2. The lower court erred in not releasing the bailbond of all the bondsmen when it released two of the bondsmen from the obligation under the bailbond.

Anent the first assignment of error, we see no merit in appellants' claim that they are entitled to full exoneration or discharged under their bail bond because they had been able to surrender the accused Florentino Tolentino to the court below. Although it may be true that the capture and surrender of the accused was brought about by the efforts of the bondsmen to comply with their undertaking and that by his surrender, the purpose of the bond had been accomplished, appellants, however, can not claim full discharge because the arrest of the accused was effected only after the order of confiscation and forfeiture of the bond had already become final. The rule is that where the period given to the bondsmen to produce the accused had elapsed and the accused had not been brought before the court, the sureties can not be completely discharged (People *vs.* Calabon, 53 Phil. 945; People *vs.* Alamada, G. R. L–2155, May 23, 1951).

Pursuant to the uniform ruling of this Court, however, that where, even after judgment against the bond had become final and executory, the purpose thereof has been accomplished by the capture and surrender of the accused, the liability of the sureties may, in the discretion of the court, be reduced or mitigated (People *vs.* Reyes, 48 Phil. 139; People *vs.* Calabon, *supra;* People *vs.* Puyal, L–8091, February 17, 1956; People *vs.* Calderon, L–9497, July 31, 1956; People *vs.* Daisin, L–6713, April 29, 1957; People *vs.* Tan, L–6239, April 30, 1957), appellants are entitled to a reduction of their liability under their bond, especially since they are not compensated sureties or sureties for profit, but have put up the bail bond of the accused Florentino Tolentino only upon considerations of friendship and generosity, so that an even more liberal and lenient treatment should be accorded them. Wherefore, it is the judgment of this Court that the liability of the bondsmen of the accused Florentino Tolentino be reduced to the amount of ₱10,000.

With respect to appellants' second assignment of error, we can not agree with their proposition that because the court *a quo* had released the properties of the deceased bondsman Mariano Tolentino from the order of execution sale and reduced the liability of bondsman Francisco Legaspi to ₱100, the entire undertaking of all the bondsmen under the bail bond has been novated or released.

With respect to the properties of the deceased Mariano Tolentino, the order of the court merely lifted the execution as to the same, but did not relieve the estate of said deceased from the obligations he had undertaken by virtue of the bond. The only purpose of the court's order was to afford the heirs of Tolentino a hearing and an opportunity to establish whatever defenses they might have against the order of forfeiture; but there is nothing to show that the court intended to effect a discharge of Tolentino or his estate. Hence, the latter remains bound under the original recognizance. The appellants, in turn, have no cause for complaint against the action of the court, since the solidary obligation assumed by them renders each one of them liable for the entirety of the obligation, which the government, as creditor, may elect to collect from any number of the solidary bondsmen. Of course, those who pay may in turn demand from their co-obligors the corresponding proportional share, by way of contribution (New Civil Code, Articles 1216 and 1217).

"ART. 1216. The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected."

"ART. 1217. Payment made by one of the solidary debtors extinguishes the obligation. If two or more solidary debtors offer to pay, the creditor may choose which offer to accept.

He who made the payment may claim from his co-debtors only the share which corresponds to each, with the interest for the payment already made. If the payment is made before the debt is due, no interest for the intervening period may be demanded.

When one of the solidary debtors cannot, because of his insolvency, reimburse his share to the debtor paying the obligation, such share shall be borne by all his co-debtors, in proportion to the debt of each."

Regarding the action of the court in reducing the liabilty of bondsman Francisco Legaspi to ₱100, such action plainly constitutes a true remission of the rest of the share of said Legaspi in the bond; wherefore, the release accrues *pro tanto* to the benefit of the other solidary obligors (8 Manresa, 214–215). But it does not operate to discharge the entire obligation, as contended by appellants, in the absence of any intent to do so. It must be recalled that solidary guaranties, like that of appellants, are subject to the rules of solidary obligations (Art. 2047, New Civil Code).

The share of each of the eleven bondsmen, in the forfeiture of ₱10,000, is ₱909.09. The court below having lowered Legaspi's share to ₱100 only, the liability of the others should be reduced to ten thousand minus ₱809.09 or ₱9,190.91, without prejudice to their right to collect ₱909.09 from the estate of the late Mariano Tolentino, by way of contribution.

WHEREFORE, the orders of forfeiture and execution of the bail bond in question are affirmed, except that its amount is hereby reduced to ₱10,000, which the bondsmen shall, as among themselves, share in the manner indicated herein. No costs in this instance.

SO ORDERED.

Parás, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepción, Endencia, and *Félix, JJ.*, concur.

Orders affirmed with modifications.

[No. L-12662. August 18, 1958]

CHUA LAO, ETC., ET AL., petitioners and appellants, *vs.* HON. CIPRIANO A. RAYMUNDO, as Mayor of the Municipality of Pasig, Rizal, ET AL., respondents and appellees.

1. MUNICIPAL CORPORATION; POWER TO ENACT ORDINANCE; REQUISITE FOR VALID ORDINANCE; CASE AT BAR.—The Municipal Council of Pasig, Rizal, passed a resolution declaring vacant the meat stalls in the public market held by aliens and for their distribution among Filipino applicants. Appellants assails the constitutionality of the resolution in that it is discriminatory and oppressive. *Held:* For a municipal ordinance to be valid and effective, it must not only be within the powers of the council to enact but must not be in conflict with or repugnant to the general law. In the case at bar, the Municipal Council of Pasig, Rizal, is under the law empowered to establish or authorize the establishment of markets and inspect and regulate the use thereof. (Section 2442(*q*), Revised Administrative Code.) The same Code also vests said council with authority to enact such ordinances, not repugnant to law, as may be necessary to carry into effect and discharge the power conferred upon it (Section 2238). In passing the resolution in question, the Council invokes as basis thereof the provisions of Republic Act 37 which nationalize the occupancy and use of stall in public markets by giving preference to citizens of the Republic in matters of lease thereof. Appellants did not contest, much less prove, that the resolution was not in conformity with said Act. Considering, therefore, that the resolution in question was within the power of the council to enact and is not repugnant or contrary to any general law, the same is valid and constitutional.

2. PUBLIC MARKET STALLS; PREFERENCE OF FILIPINOS IN THE LEASE THEREOF; WHEN PREFERENCE ARISES.—While Republic Act 37 does not specify when the preference of Filipinos to public market stalls accrues, the law, apparently, is applicable whenever there is a conflict of interest between Filipino applicants and aliens for the lease of said stalls, in which situation the right to preference immediately arises.

APPEAL from a judgment of the Court of First Instance of Rizal. Cañizares, *J.*

The facts are stated in the opinion of the Court.

Koh & David for petitioners and appellants.

The Provincial Fiscal of Rizal for the respondents and appellees.

FELIX, *J.:*

Chua Lao, Cheng Kee Tek, Go Keng Bon, Hai Hing, Chua Kee, Chua Gui, Lim Chuan, Lee Tiong, Chua Kee Kim and Teng Guan, all Chinese citizens, are the holders of stalls Nos. 69, 66, 67, 68, 59, 70, 71, 75, 80 and 83, respectively, in the meat section of the public market of Pasig, Rizal, allegedly even before the outbreak of the Second World War, and were duly licensed to engage in the retail business. The meat section of the aforesaid public

market has 54 stalls; as of 1955, 33 of them were actually occupied—23 by Filipinos and 10 by Chinese—and 21 were vacant.

On January 8, 1955, prompted by a letter sent by Filipino meat vendors calling attention to the fact that there were alien stallholders in the public market, the Municipal Council of Pasig, Rizal, passed and approved Resolution No. 5, series of 1955, declaring all the stalls in the meat section of the public market of said municipality vacant starting February 1, 1955 (Exhibit A). But 15 stallholders (Filipinos) in the same section took exception to the measure for the reason that if the stalls that they were occupying would be subjected to applications and be disposed of by lot, they may not be able to get the same places. Being appraised of this situation, the Municipal Council, pursuant to Republic Act 37 as implemented by Department Orders Nos. 32 and 42, enacted Resolution No. 10 dated January 22, 1952, amending Resolution No. 5, declaring as vacant the stalls in the meat section of the public market of Pasig, Rizal held by aliens, effective February 10, 1955, for distribution among Filipino applicants. It was also provided that only if there would be stalls unapplied for by Filipinos or in the absence of any Filipino applicant would aliens be allowed to lease any of them (Exhibit A–1).

As the Municipal Mayor and the Municipal Treasurer of Pasig, Rizal, were set to enforce the said resolution, the Chinese stallholders filed a petition for prohibition with the Court of First Instance of Rizal, Pasig branch, naming said officials as respondents (Civil Case No. 3437), alleging that the aforesaid resolution was unduly discriminatory, oppressive and prejudicial to their interest, and prayed that respondents be definitely enjoined from enforcing resolutions Nos. 5 and 10, series of 1955, on the ground that they were unconstitutional. And upon petitioners' filing a bond for ₱5,000, a writ of preliminary injunction was issued by the Court enjoining respondents from enforcing the disputed resolutions.

On March 30, 1955, after the respondents had filed their answer, the parties submitted a stipulation of facts providing, among others:

"* * *.

4. That the stalls occupied by the petitioners were declared vacant by the municipal council, pursuant to Resolution No. 5, as amended by No. 10, Series of 1955, of the municipal council of Pasig, Rizal.

And pursuant to that resolution, the Municipal Treasurer declared the said 10 stalls occupied by the petitioners, vacant, and set a date for the reception of applications for leases up to February 20, 1955. As a consequence of that call of the Municipal Treasurer, twelve (12) applications were filed by Filipino citizens for the ten (10) stalls occupied by the petitioners.

5. That out of the 21 vacant stalls, five (5) are already leased to Filipino citizens permanently, who have paid the corresponding fees. The lease have been executed after the issuance of the writ of preliminary injunction.

The remaining sixteen (16) vacant stalls in the meat section of the said public market of Pasig Rizal, have been applied for by 16 Filipino applicants, in accordance with the standing rules and regulations or ordinances of the Municipal Council on March 4, 1955.

6. That the twelve (12) Filipino applicants for the stalls occupied by the petitioners are different persons from those who applied for the sixteen (16) vacant stalls, except one, Benjamin Alberto, who applied also for one of the sixteen (16) stalls.

7. That the twelve (12) applicants for the stalls occupied by the herein petitioners filed their applications for the said stalls prior to the institution of this case.

However, no leases for the same were awarded in view of the writ of preliminary injunction.

8. That the stalls occupied by the herein petitioners are equally as good as the other forty-four (44) market stalls in the same meat section of the said public market of Pasig, in the sense that they are made of the same materials, cement, and the same size and the same charges are collected by the Municipal Treasurer of the said municipality of Pasig, Rizal.

Based on the aforesaid agreement, the lower Court rendered judgment dated May 21, 1955, holding that the enactment of the ordinances in question was a valid exercise of the power of the Municipal Council pursuant to Administrative Order No. 32 of the Department of Finance, as amended, after finding that the 10 stalls occupied by Chinese were applied for by Filipinos, and that of the 21 originally existing vacant stalls, 5 had already been leased to Filipinos and the remaining 16 also duly applied for.

On June 15, 1955, petitioners filed a motion for new trial on the strength of a written statement by the respondent Municipal Treasurer dated June 14, 1955, to the effect that of the 5 Filipinos who were awarded lease of stalls after the institution of that action, 1 paid the fee only up to March 31, 1955, and the remaining 4, while paying the corresponding fees, did not regularly occupy or utilize the same. It was further declared that as of March 31, 1955, 17 stalls in the same section remained vacant. As said motion was denied, petitioners appealed to the Court of Appeals. The case, however, was certified to this Court for the reason that the main question refers to the constitutionality of Resolutions 5 and 10, series of 1955, of the Municipal Council of Pasig, Rizal, and therefore falls within the jurisdiction of the Supreme Court (Section 17–1, Republic Act 296).

The questions presented by the instant action are: (1) whether or not the aforementioned Resolutions of the Municipal Council of Pasig are discriminatory and oppressive to be violative of the Constitution; and (2) whether or not the lower Court erred in denying petitioners' motion for new trial.

It is clear that while it is true that there were 21 vacant stalls in the meat section of the public market of Pasig, Rizal, equally as good as any other stall in the same market, the 10 stalls occupied by aliens were applied for by Filipinos, in view of which, the Municipal Council had to enact the disputed Resolutions. In assailing the constitutionlity of said measures, petitioners-appellants contend that the purpose of the aforesaid enactments apparently was to eject them from their place of business and deprive them of their means of livelihood.

The Municipal Council of Pasig, Rizal, is under the law empowered "to establish or authorize the establishment of * * * markets, and inspect and regulate the use of the same" (Section 2442 (*q*), Revised Administrative Code). Section 2238 of the same legal body, which prescribes the general powers of municipal councils, also vests them with authority to "enact such ordinances and make such regulations, not repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred upon it by law and such as shall seem necessary and proper to provide for the health and safety, promote the prosperity, improve the morals, peace, good order, comfort and convenience of the municipality and the inhabitants thereof." But for a municipal ordinance to be valid and have force and effect, it must not only be within the powers of the council to enact but same must not be in conflict with or repugnant to the general law. In the case at bar, the Council invoked the provisions of Republic Act 37 as basis of the resolutions in question, and considering that appellants did not contest, much less prove, that the said resolutions were not in conformity with said law or that they were not within the power of the council to enact, the question that necessarily comes up is whether Republic Act 37, nationalizing the occupancy and use of stalls in public markets by giving preference to citizens of this Republic in matters of lease thereof (Section 1, Republic Act 37) is constitutional or not. This question has already been settled and determined in a previous case when several Chinese stallholders, claiming that the enforcement of Republic Act 37 would infringe their right to due process and equal protection clause of the Constitution, filed an action for prohibition against the Secretary of Finance seeking to restrain and prohibit the latter from implementing said law. In upholding the validity of the aforesaid Act and the administrative order of the Secretary of Finance, this Court pronounced:

"Public markets are public services or utilities as much as the public supply and sale of gas, gasoline, electricity, water and public transportation are. Under the Constitution, the operation of all

public services are reserved to Filipino citizens and to corporations and associations sixty *per centum* of the capital of which belongs to Filipino citizens.

* * *

In impugning the validity of Republic Act No. 37, appellees invoke general guarantees in the Bill of Rights, such as the due process of law and the equal protection of the laws. Even if their position could be supported under said general guarantees, * * *, said guarantees have to give way to the specific provision above quoted, which reserves to Filipino citizens the operation of public services or utilities.

Furthermore, the establishment, maintenance, and operation of public markets, as much as public works, are part of the functions of government. The privilege of participating in said functions, such as that of occupying public market stalls, is not among the fundamental rights or even among the general civil rights protected by the guarantees of the Bill of Rights. The exercise or enjoyment of public functions are reserved to a class of persons possessing the specific qualifications required by law. Such is the case of the privilege to vote, to occupy a government position, or to participate in public works, they are reserved exclusively to citizens. Public functions are powers of national sovereignty and it is elementary that such sovereignty be exercised exclusively by nationals".
(Co Chiong *vs.* Cuaderno, G. R. No. L–1440, promulgated March 31, 1949).

Petitioners-appellants, however, maintain that this right to preference could only be availed of where there are both Filipino and alien applicants to the same stall or stalls, but in cases where there are other vacant stalls, equally as good as those already occupied by aliens which could be applied for and awarded to Filipino applicants, the latter cannot single out those held by aliens and have them declared vacant on the theory that they are entitled to preference under the law. To do so, appellants argue, would be highly discriminatory and oppressive.

In enacting Republic Act No. 37, the Legislature, obviously prompted by a desire to rid or relieve this country of the shackles of foreign economic control and domination, intended to give to its citizenry monopoly of the retail business in the public markets—an aspiration which this Court declared to be within the limits of legislative authority (Ichong *vs.* Hernandez, G. R. No. L–7995, May 31, 1957). For this reason, said law specifically provides:

"SECTION 1.—All citizens of the Philippines shall have preference in the lease of public market stalls". (Rep. Act No. 37).

It may be noted that the aforesaid Act does specify when the privilege allowed by Republic Act No. 37 accrues. The law, apparently, is applicable whenever there is a conflict of interest between Filipino applicants and aliens for lease of stalls in public markets, in which situation, the right to preference immediately arises. Accordingly, where the law does not distinguish, we should not make any distinction. In the case at bar, it does not appear

how the market fees for the stalls in question are collected, and considering that the lease therefor terminates everyday, if the fee is paid daily, or every month or every year as the case may be, the privilege could be revoked by the state, through the municipal council, upon the expiration of such lease, and considering further that the resolutions terminating the lease granted to appellants herein, by declaring the stalls occupied by them as vacant, are not repugnant or contradictory to any general law, there is no plausible reason why the decision of the lower court and the order denying appellants' motion for new trial should not be affirmed.

WHEREFORE, the decision appealed from is hereby affirmed, with costs against appellants.

IT IS SO ORDERED.

Parás, C. J., Bengzon, Reyes, A., Bautista Angelo, Concepción, Reyes, J. B. L., and *Endencia, JJ.,* concur.

Montemayor, J., reserves his vote.

Judgment affirmed.

DECISIONS OF THE COURT OF APPEALS

[No. 15292-R. April 18, 1959]

WAKAT DIAMNUAN, plaintiff and appellant, *vs.* TUNQUIS DIMOT, defendant and appellee

1. ADMINISTRATIVE LAW; CONTRACTS ENTERED INTO BY NON-CHRISTIANS; APPROVAL BY THE PRESIDENT OF THE PHILIPPINES NECESSARY.—The power to approve contracts entered into by non-Christians in the Mountain Province was conferred by law, Act No. 2798, as amended by Act No. 2913, upon the Director of the Bureau of Non-Christian Tribes. Upon the abolition of the Bureau of Non-Christian Tribes, its functions were transferred, first to the Department of Interior, Section 4, Commonwealth Act No. 75, and later to the Office of the President of the Philippines, upon the abolition of that Department. Executive Order No. 383 of the President of the Philippines, dated December 20, 1950.
2. CONTRACT; SIGNATURES SECURED THROUGH FRAUD AND DECEIT NULL AND VOID.—It is well-settled that if a person is ignorant of the contents of a written instrument and signs it under a mistaken belief induced by misrepresentation that it is an instrument of a different character, without negligence on his part, his signature or thumbmark thereon must be considered as secured through fraud and deceit and wanting in consent, and that the deed is null and void. Articles 1318, 1330 and 1331, New Civil Code; Madrigal & Co. *vs.* W. F. Stevenson & Co., 15 Phil., 38; Dumasug *vs.* Modelo, 34 Phil., 252.

APPEAL from a judgment of the Court of First Instance of Baguio. De Veyra, *J.*

The facts are stated in the opinion of the Court.

Pablo C. Sanidad, Andres Cosalan and *Bantas Suanding*, for plaintiff and appellant.

Reyes and *Cabato*, for defendant and appellee.

NATIVIDAD, *J.:*

This is an action for the cancellation in Original Certificate of Title No. 1368, Office of the Register of Deeds for the Sub-Province of Benguet, issued in the name of the defendant, Tunquis Dimot, of the parcel of land therein described as Lot No. 2 and the issuance in the name of the plaintiff, Wakat Diamnuan, of the corresponding transfer certificate of title therefor, and for damages, on the ground that that lot had been sold by the defendant to the plaintiff through a public deed. The defendant resists the action, on the ground that he had not sold said parcel of land to the plaintiff, and on the further ground that, granting *arguendo* that such sale had taken place, nevertheless the same is null and void under Sections 118 and 122 of Act No. 2874.

It appears that the defendant Tunquis Dimot, a non-Christian around 75 years old and resident of the barrio

of Gumatdang, municipal district of Itogon, sub-province of Benguet, Mountain Province, was the owner of three small parcels of land, situated in that barrio and municipal districts, and covered by Orignal Certificate of Title No. 1368 of the Office of the Register of Deeds for the Sub-Province of Benguet, which was issued in his favor on September 15, 1934, on the strength of a free patent issued to him. Since that date, and for sometime prior thereto, the defendant has been in the peaceful possession of those parcels of land and has been planting them to rice and camotes.

The evidence of the plaintiff, Wakat Diamnuan, tends to show that sometime in the month of December 1947, the plaintiff and the defendant entered into a verbal agreement, whereby the later agreed to sell to the former one of the parcels of land covered by the above-mentioned original certificate of title, which is described therein as Lot No. 2, and which contains an area of 0.3643 hectares, for the sum of ₱1,000.00, to be paid in four installments, the first to be paid in that year and the last in 1954; that it was agreed that after the payment of the last installment, a formal deed of sale of that lot would be executed by the defendant in favor of the plaintiff; that in that month of December 1947, the plaintiff paid to the defendant the sum of ₱290.00 as first installment on account of the purchase price of the lot, and pursuant to their agreement, said plaintiff on December 26, 1947, took possession thereof; that in the first week of February 1949, the plaintiff paid to the defendant another sum of ₱250.00; that in the month of March 1952, the plaintiff again paid to the defendant another sum of ₱250.00; that on April 22, 1954, the plaintiff paid to the defendant the last installment of ₱210.00, and they agreed to go to Baguio and meet in the office of Attorney Andres Cosalan for the execution of the deed of sale; that no receipts have been issued by the defendant for the amounts paid on account of the purchase price of the lot; that on that same day, April 22, 1954, the plaintiff and the defendant met in the office of Attorney Andres Cosalan and they requested said attorney to prepare a deed of sale; that Attorney Cosalan immediately prepared the deed of absolute sale Exhibit "A", and after interpreting its contents to the defendant in the *Ibaloi* dialect and after the latter had signified his conformity thereto, had the latter thumbmark it in the presence of two witnesses; that after the execution of that deed of sale, Attorney Cosalan sent it to the municipal mayor of Itogon through the plaintiff for action; that the municipal mayor of Itogon, after having questioned several residents of the place and relying on the information given him by the plaintiff, who was

a councilor of that municipal district, forwarded the deed to the Provincial Governor of the Mountain Province, recommending approval thereof; that the Provincial Governor of the Mountain Province approved the deed on May 5, 1954; that after the approval of this deed by the Provincial Governor of the Mountain Province, plaintiff's counsel presented it to the Register of Deeds of Benguet, Mountain Province, for recording and issuance of the corresponding transfer certificate of title in the name of the plaintiff; that the Register of Deeds of Benguet advised Attorney Andres Cosalan that the deed can not be recorded unless the owner's duplicate certificate of Original Cectificate of Title No. 1368 be surrendered; and that thus advised, Attorney Cosalan demanded from the defendant that he produce his duplicate certificate, but the latter refused.

The defendant, testifying for the defense, denied having sold the parcel of land in question to the plaintiff, or having received from the latter any amount of money on account of its purchase price. He stated that sometime in the month of April 1954, he worked as laborer of the plaintiff who was then making assessments for the Balatoc Mining Company; that on April 22, 1954, the plaintiff invited him to come with him to Baguio City so that he could get his salary, as he was going to draw some money from the bank; that upon arriving at the City of Baguio he and the plaintiff bought some liquor and drank it together; that after drinking, they went to a store where they bought shoes and pants which were paid for by the plaintiff; that after making said purchases, they again went back to the store where they again drank some more liquor, and thereafter proceeded to a high building where he was made to sign a paper; that he signed that paper because the plaintiff told him that it was necessary for him to sign it so that he could get his wages for the work he had rendered to the Balatoc; that when he was asked to thumbmark that paper he was very sleepy, as he was drunk; that he stamped his thumbmark on that paper with the help of Attorney Bantas Suanding; that that paper turned out to be the deed of sale Exhibit "A"; and that he did not know then the contents of that paper, and only found out that it was a deed of sale of his property when he received the letter of Attorney Andres Cosalan telling him to produce the owner's duplicate of Original Certificate of Title No. 1368, as he had sold his property to the plaintiff.

Upon the evidence submitted by the parties, the trial court rendered judgment, dismissing plaintiff's complaint, with costs, on the finding that the deed of sale Exhibit "A" is null and void. From this judgment, the plaintiff appealed.

The questions raised by the appellant in this appeal may be reduced to two main propositions, to wit:

First.—Whether or not the trial court erred in dismissing this action on the finding that the deed of sale Exhibit "A" is null and void under Sections 145 and 146 of the Administrative Code of Mindanao and Sulu; and

Second.—Whether or not, on the hypothesis that the deed of sale Exhibit "A" is null and void, the trial court erred in not ordering the defendant to reimburse to the plaintiff the sum of ₱1,000.00 which, it is alleged, the former had received from the latter as purchase price of the lot involved in this action.

1. Appellant contends under the first proposition, (a) that the Administrative Code of Mindanao and Sulu, which derives its force and effect from Section 2579 of the Revised Administrative Code, is not in force in the Mountain Province, particularly after April 20, 1951, when the municipal district of Itogon, where the lot involved in this action is located, was converted into a municipality, and (b) that even granting, *arguendo,* that said Administrative Code of Mindanao and Sulu were applicable to the Mountain Province, nevertheless, as the deed of absolute sale Exhibit "A" had been approved by the Provincial Governor of that province as required in said code, and is public document duly acknowledged before a notary public with all the formalities prescribed by law, the trial court erred in declaring it null and void.

We do not share appellant's view. That the Administrative Code of Mindanao and Sulu is applicable to the Mountain Province is a settled question. Section 1 of Act No. 2798, as amended by Act No. 2913, provides in part:

"SECTION 1. The provisions of chapters sixty-three and sixty-four of the Administrative Code of nineteen hundred and seventeen, and all other provisions of law, or having the force and effect of law, applicable to provinces and minor political subdivisions organized thereunder, are hereby extended and applied to the Mountain Province and the Province of Nueva Vizcaya: *Provided,* That the powers and duties prescribed by title eleven of the Administrative Code of nineteen hundred and seventeen for the Governor or the Administrative Council of the Department of Mindanao and Sulu shall be performed and exercised by the Director of the Bureau of Non-Christian Tribes in the Mountain Province and the Province of Nueva Vizcaya: * * * *".

And in the case of Kairuz vs. Lobos, 40 Off. Gaz. 198 it was held:

"The provisions of the Administrative Code of Mindanao and Sulu which requires the approval of the provincial governor to certain contracts entered into by non-Christians has been extended to the Mountain Province, except that in this province the approval must be given by the Director of the Bureau of Non-Christian Tribes as indicated in Act No. 2798."

The fact that the municipal district of Itogon has been organized into a municipality on April 20, 1951, did not place said municipality outside of the sway of that code. There is nothing in Republic Act No. 616, or elsewhere in the statute books, any provision which expressly or by necessary implication repealed the provision of Section 1 of Act No. 2798, as amended by Act No. 2913, above referred to. Moreover, the reason underlying the above provision of law did not cease upon the conversion of the municipal district of Itogon into a regular municipality. The non-Christian inhabitants of that municipal district continued in the same state of culture after its conversion into a regular municipality. There are still many who are ignorant and could easily be duped and who need protection from the Government from those who are inclined to prey upon their ignorance and ductility.

As regards the contention that the deed of sale Exhibit "A" should have been upheld, because it bears the approval of the Provincial Governor of the Mountain Province, the trial court found that the signature of the Provincial Governor was made perfunctorily, or as a matter of course, because of the recommendation of the vice-mayor of Itogon that it be approved, and that while some sort of investigation had been made by that vice-mayor before making his recommendation, such investigation, however, was, according to the finding of the trial court, haphazard, without complying with the directive issued for the purpose by the defunct Bureau of Non-Christian Tribes.

We find in the evidence no reason for disturbing this finding of the trial court. It is not disputed that the Provincial Governor of the Mountain Province did not make any investigation of his own before approving the deed of sale in question. And it is clear from the evidence that the investigation made by the Acting Mayor of Itogon was haphazard. This official admitted on the witness stand that when he prepared his recommendation, Exhibit "B", he did not investigate the vendor Tunquis Dimot, but relied on the information given him by the headman of the barrio, one Chale, and other four persons living in the vicinity; and in the explanation given by him to the Deputy Provincial Governor of the Mountain Province he stated that in recommending the approval of the deed of sale Exhibit "A", he relied on the integrity of the vendee in whom he had faith and confidence, the latter being a councilor. Exhibit "6". Morover, even granting that the approval of said deed were made after proper investigation, nevertheless such approval did not produce any legal effect. It did not comply with the provisions of the law. As held in the case of Kairuz *vs.* Lobos, *supra*, the power to approve contracts entered into by non-

Christians in the Mountain Province was conferred by law, Act No. 2798, as amended by Act No. 2913, upon the Director of the Bureau of Non-Christian Tribes. It is true that the Bureau of Non-Christian Tribes had long been abolished and that in the year 1954, when the deed of sale Exhibit "A" was allegedly executed, that bureau was no longer in existence. But, upon the abolition of that bureau its functions were transferred, first to the Department of Interior, Section 4, Commonwealth Act No. 75, and later to the Office of the President of the Philippines, upon the abolition of that Deparment. Excutive Order No. 383 of the President of the Philippines, dated December 20, 1950. It does not appear that the deed in question has been approved by the Office of the President of the Philippines.

Appellant lays stress on the fact that the deed of absolute sale Exhibit "A" was acknowledged before a notary public with all the formalities prescribed by law. It is claimed that it being a public document, under several decisions of the Supreme Court, Ramientos *vs.* Alvarico, 50 Off. Gaz. 4313; Chipeco *vs.* Pua Chua Eng, 48 Off. Gaz. 699; Sy Tiangco *vs.* Pablo and Apao, 59 Phil., 119; El Hogar Filipino *vs.* Olviga, 60 Phil., 17, the same should not have been voided on the evidence of record, which, it is alleged, is not strong and convincing. We are not unmindful of the doctrine invoked by the appellant. But, we agree with the trial court that the evidence presented by the appellee is sufficient to overcome the presumption of validity given by law to public documents. It is not disputed that the appellee was a member of the non-Christian tribe, around 70 years old and hard of hearing at the time the alleged transaction took place. He was illiterate, had had no schooling whatsoever, did not understand the English language, and did not know how to read and write, even his name. It also appears proven that he was under the influence of liquor at the time he was required to stamp his thumbmark on the deed in question. Without, therefore, minimizing the claim of Attorneys Cosalan and Suanding that that deed was translated to the appellee paragraph by paragraph in the *Ibaloi* dialect, and that the latter was made to stamp his thumbmark thereon after he had signified with a movement of his head that he understood the nature of the document, it is not improbable that the appellee did not hear or understand what was then translated to him, and that he stamped his thumbmark on said deed in the belief that it was something which he must thumbmark to enable him to collect his wages from the Balatoc Mining Company, as the appellant had assured him. Under the circumstances, that document is null and void. It is

well-settled that if a person is ignorant of the contents of a written instrument and signs it under a mistaken belief induced by misrepresentation that it is an instrument of a different character, without negligence on his part, his signature or thumbmark thereon must be considered as secured through fraud and deceit and wanting in consent, and that the deed is null and void. Articles 1318; 1330 and 1331, New Civil Code; Madrigal & Co. *vs.* W. F. Stevenson & Co., 15 Phil., 38; Dumasug *vs.* Modelo, 34 Phil., 252.

2. It is contended under the second proposition that, granting *arguendo* that the deed of absolute sale Exhibit "A" were not valid, nevertheless the trial court committed error in dismissing appellant's complaint without providing for the reimbursement of the ₱1,000.00 paid by the appellant to the appellee as purchase price of the lot described in said deed.

Again, we do not share appellant's view. It will be noted that the payments of the several amounts claimed by the appellant, or the ₱290.00 paid on December 26, 1947, ₱250.00 in the first week of February 1949, ₱250.00 in March 1952, and ₱210.00 on April 22, 1954, were denied by the appellee, who further stated that he had not sold his property to the appellant nor had he received any amount from the latter as purchase price thereof. The question, therefore, is reduced to one of credibility of opposing witnesses. The trial court, which, for obvious reasons, was in a better position than this Court to determine the relative credibility of opposing witnesses, discredited the appellant and believed the appellee and found that the facts are as testified to by the latter. We find no reason in the record for disturbing this finding. Appellant's claim that the appellee agreed to sell to him on December 26, 1947, the land in question for the sum of ₱1,000.00 payable in four installments, the first to be paid in that year and the last in the year 1954, and that he paid on that date the first installment of ₱290.00, is hard to believe. The witness Manuel Malicdan of Dalisay, Itogon, presented by the appellant as rebuttal witness, stated, in direct examination, that sometime in the year 1947 the appellee Tunquis Dimot offered in sale to him the lot in question; that he accepted the offer and they agreed at a purchase which they fixed at ₱1,000.00 payable in cash and in lump sum in the City of Baguio, but that when the appellee came to the City of Baguio, the latter told him that he had already sold the land to the appellant (pp. 141 and 143, t.s.n.). If the claim of this witness is true, and the same has not been denied, it cannot be believed that the appellee unless he be an idiot, and there is no showing that he was such, preferred to sell the land to the appellant for the same

amount of ₱1,000.00, payable in four installments within a period of seven years. It is also hard to believe that the appellant paid to the appellee the amounts of ₱290.00 on December 26, 1947, ₱250.00 in the first week of February 1949, ₱250.00 in March 1952, and ₱210.00 on April 22, 1954, without requiring the latter to give him receipts for said amounts. The procedure is unbusinesslike. And while the amounts involved are not big, nevertheless any ordinary person, under the circumstances, would have required receipts therefor, in order to have something on which he could rely in case of need. The alleged contract of sale was verbal. The payment of the purchase price, according to the appellant, was to be made in four installments within a period of seven years, and the vendor was already around 70 years of age. There was, therefore, the possibility that the terms of the agreement and the payments made may be forgotten by the appellee before the last installment is paid. It was not also improbable that the appellee might die, as the possibility of death is not remote to an old man around 70 years of age. Yet, the appellant did not required the giving of such receipts, and allegedly disbursed money without having anything upon which to establish his claim in case any of such eventualities happens. Under the evidence, therefore, we agree with the trial court that the payment in four installments of the alleged purchase price of ₱1,000.00 for the lot in question has not been satisfactorily established. Consequently, the trial court's refusal to order the reimbursement of the amounts allegedly paid by the appellant to the appellee is warranted.

FOR THE FOREGOING, we find that the judgment appealed from is in accordance with law and supported by the evidence. The same, consequently, is hereby affirmed, with the costs taxed against the appellant.

IT IS SO ORDERED.

Sanchez and *Angeles, JJ.*, concur.

Judgment affirmed.

[No. 20997–R. April 22, 1959]

GODOFREDO DE LEON, petitioner and appellant, *vs.* HON. TEOFISTO M. CORDOVA, in his capacity as Mayor of the City of Bacolod, respondent and appellee.

CIVIL SERVICE; REPLACEMENT OF A NON-ELIGIBLE BY A NON-ELIGIBLE NOT PROHIBITED.—The replacement of a non-eligible by a non-eligible is not barred by law. (Amora et al *vs.* Bivera, et al, 52 Off. Gaz., 302). To maintain that a non-eligible can be replaced only by an eligible or a veteran would run counter to the progressive tendency of public service which is the bounden duty of the corresponding Head of Department to enhance. He may determine when a non-eligible who has already served for a period of three months should be replaced by a non-eligible. And it is not for the replaced to say that he is more efficient than the one replacing him.

APPEAL from a judgment of the Court of First Instance of Negros Occidental. Enriquez, *J.*

The facts are stated in the opinion of the Court.

Angel F. Lobaton, for petitioner and appellant.

Acting Solicitor General Guillermo E. Torres and *Solicitor Pacifico P. de Castro,* for respondent and appellee.

MARTINEZ, *J.:*

This is a petition for a writ of mandamus whereby petitioner, Godofredo de Leon, seeks restoration to his office as market inspector, from which he was ordered separated by the City Mayor of Bacolod on January 4, 1956.

Not being a civil service eligible De Leon served on an emergency appointment as market inspector of Bacolod City from September 6, 1949 to January 4, 1956. His last appointment, promotional in character, was extended on November 16, 1955 which recites as follows:

"Mr. Godofredo de Leon
City of Bacolod

Sir:

By virtue of the authority vested in me under the provisions of Section 37 of Commonwealth Act No. 326, as amended, you are hereby temporarily appointed as *Market Inspector* in the Office of the Treasurer, City of Bacolod, with compensation at the rate of *One Thousand Five Hundred Sixty* (₱1,560.00) Pesos per annum effective *July 1, 1955.* Promotion in salary in same position from ₱1,500.00 to ₱1,560.00 per annum is an exceptional case under Sec. 256 of the Rev. Adm. Code."

(Annex D)

The case was tried on the following stipulation of facts:

"1. That the respondent as mayor-elect of the City of Bacolod took his oath of office at midnight of December 31, 1955;

"2. That petitioner was appointed as market inspector in the office of the City Treasurer, Bacolod City, with compensation at the rate of ₱960.00 per annum on September 6, 1949 by then acting City Mayor S. Villanueva and authorized under Section 682 of the

Revised Administrative Code by the Commissioner of Civil Service, as shown by his appointment marked as Annex "A" hereof; subsequently, he was appointed to the same position with a promotional salary of ₱1,200.00 per annum effective July 1, 1951, as shown by his appointment dated October 29, 1951 signed by Mayor Felix P. Amante and authorized under Section 682 by the Commissioner of Civil Service on January 30, 1952 and approved by Hon. Sixto B. Ortiz, Undersecretary of Finance on February 1, 1952, under Section 682 of the Revised Administrative Code to continue until replaced by an eligible but not beyond 30 days from the date of receipt of the certificate of eligibles from the Commissioner of Civil Service, which appointment is hereto attached as Annex "B"; and then on January 7, 1954, the petitioner was given again a promotional salary in the said position at ₱1,500.00 per annum by Mayor Felix F. Amante, which appointment was authorized under Section 682 of the Revised Administrative Code by the Hon. Commissioner of Civil Service on January 22, 1954, and approved by the Hon. J. G. Castillo, acting chief of Provincial and Municipal Finance on February 11, 1954, and hereto attached as Annex "C" hereof; and finally given another promotion in salary in the same position from ₱1,500.00 to ₱1,560.00 per annum effective July 1, 1955 in an appointment signed by acting Mayor Manuel M. Villanueva on November 16, 1955, which appointment was authorized by the Commissioner of Civil Service on January 30, 1956 and approved by the Hon. Jose P. Trinidad, Undersecretary of Finance as an exceptional case under Section 256 on April 28, 1956, which appointment is hereto attached as Annex "D" hereof;

"3. That his appointment was temporary in nature;

"4. That petitioner is not a civil service eligible;

"5. That petitioner was dismissed from the service by respondent Mayor Teofisto M. Cordova on January 4, 1956, as shown by the letter of dismissal hereto attached as Annex "E" hereof, which letter bears no statement of the grounds for such dismissal whatsoever but simply is a notification of the termination of his services effective that date;

"6. That no charges were preferred against the petitioner before or after his dismissal by respondent on January 4, 1956 and that respondent has not requested nor received any certificate of eligibles from the civil service commissioner before the dismissal of petitioner;

"7. That petitioner was replaced by a person who is neither a civil service eligible nor a veteran;

"8. That after his removal from the service on January 4, 1956, the petitioner filed his application for terminal leave and as a consequence thereof, he was paid by the City Treasurer of Bacolod City the amount of ₱388.04 in accrued vacation and sick leaves;

"9. That petitioner together with 21 other employees of the City Treasurer who were dismissed by respondent on January 4, 1956 had complained to the Presidential Complaint and Action Commission (PCAC) in a letter which they sent on January 14, 1956, a copy of which is hereto attached and marked as Annex "F" hereof; on March 26, 1956, petitioner and 20 other dismissed employees sent respondent a letter of appeal and reconsideration, a copy of which is hereto attached and marked as Annex "G"; finally, petitioner with the other dismissed employees sent another letter of complaint to the Presidential Complaint and Action Commission (PCAC) on May 11, 1956, as shown by a copy hereto attached and marked as Annex "h" hereof;

"10. That petitioner admits to the comparative statement of the City Treasurer's Office, Bacolod City, for 1955 and 1956 in matters

of market collection, as officially signed by Jesus R. Garcia, administrative officer in the said office, per his certificate enclosed and marked as Annex "I" hereof.

"WHEREOF, it is respectfully prayed by the parties that the foregoing agreed stipulation of facts be admitted and considered as the basis for the final disposition of this case, together with their respective memorandum to be submitted by both parties within a period given by the Court."

And thereafter the court below rendered decision, the dispositive part of which reads as follows:

"WHEREFORE, judgment is hereby rendered ordering the dismissal of this case, without special pronouncement as to costs."

Not agreeable to this judgment, petitioner perfected an appeal on time and, now alleges that:

"1. The lower court erred in citing the case of Orais et al. *vs.* Ribo et al to justify the dismissal of petitioner.

"2. The lower court erred in dismissing this case and finding that the petitioner is not entitled to the remedy applied for."

The law governing the appointment of herein petitioner is Section 682 of the Revised Administrative Code which recites, among others:

"*Temporary and emergency employees.* Temporary appointment without examination and certification by the Commissioner of Civil Service or his local representative shall not be made to a competitive position in any case, except when the public interests so require, and then only upon the prior authorization of the Commissioner of Civil Service; and any temporary appointment so authorized shall continue only for such period not exceeding three months as may be necessary to make appointment through certification of eligibles, and in no case shall extend beyond thirty days from receipt by the chief of the bureau or office of the Commissioner's certification of eligibles;"

Thus, petitioner's appointment being of temporary character "shall continue only for such period not exceeding three months as may be necessary to make appointment through certification of eligibles, and in no case shall extend beyond thirty days from receipt by the chief of the bureau or office of the Commissioner's certification of eligibles;". Petitioner had held the position of Market Inspector for more than six (6) years which far exceeds the period he was allowed by law to stay therein. Even in the light of his last promotional appointment effective on July 1, 1955, he had already overstayed his term at the time he was ordered to cease on January 4, 1956.

De Leon would not have lifted a finger in protest had he been replaced by a civil service eligible or a veteran. The person who succeeded him was non-eligible. But the replacement of a non-eligible by a non-eligible is not barred by law, for, as the Supreme Court has said in Amora et al. *vs.* Bibera, et al. (52 Off. Gaz., 3021):

"The temporary appointment of non-eligibles to replace non-eligibles whose terms have expired is not prohibited. * * * Non-eligibles do not come under the protection of the Act."

The principle enunciated in the opinion is perfectly applicable in the case at bar.

But the non-eligible replacing a non-eligible should appear to be more efficient than the replaced, if the spirit of the law is to be adhered to, it is contended. This is not true. To maintain that a non-eligible can be replaced only by an eligible or a veteran would run counter to the progressive tendency of public service which is the bounden duty of the corresponding Head of Department to enhance. He may determine when a non-eligible who had already served for a period of three months should be replaced by a non-eligible. And it is not for the replaced to say that he is more efficient than the one replacing him. At any rate, it is worthy of notice that the one who replaced petitioner seems to be more efficient than him, as shown by the statement of market collections for the year 1956 which is ₱27,392.50 more than the collections in 1955, the last year of petitioner's incumbency.

FOR ALL THE FOREGOING, we find no reversible error in the decision appealed from and the same should be, as it is hereby, affirmed, without further pronouncement as to costs.

Santiago and *Piccio, JJ.*, concur.

Judgment affirmed.

[No. 21659-R. Abril 15, 1959]

ARELLANO UNIVERSITY, INC., Y ERNEST BERG, demandantes y apelantes, *contra* PEDRO C. HERNAEZ, demandado y apelado.

MOCIONES; DEBER DEL JUZGADO DE RESOLVER PRIMERAMENTE LA MOCIÓN DE REAPERTURA DEL JUICIO ANTES DE FALLAR LA CAUSA.—Si antes de decidir la causa, una de las partes presenta una moción jurada pidiendo la reapertura de la vista con el fin de introducir como prueba adicional un documento recientemente descubierto, el juzgado inferior falla la causa sin antes resolver dicha moción, tal actuación de dicho tribunal constituye un error y abuso de su discreción. Es su deber resolver primeramente la moción de reapertura del juicio de la misma manera que un juzgado esta obligado a resolver primero una moción de sobreseimiento antes de dictar su decisión sobre los méritos de un asunto (Saludes *vs.* Pajarillo y Bautista, 78 Phil. 754).

APELACION contra una sentencia del Juzgado de Primera Instancia de Rizal. Perez, *J.*

Los hechos aparecen relacionados en la decisión del Tribunal.

E. Voltaire Garcia, en representación de la demandante y apelante "Arellano University, Inc.".

Felix S. Falgui, en representación del demandante y apelante Ernest Berg.

Manuel D. Melotindos y Eduardo P. Arboleda, en representación del demandado y apelado Pedro C. Hernaez.

CABAHUG, *M.:*

Trátase aquí de la apelación interpuesta por los demandantes contra la sentencia dictada por el Juzgado de Primera Instancia de Rizal, Sala de la Ciudad de Pasay, sobreseyendo su demanda que pide que se ordene al demandado a remover la tapia y otras obras de obstrucción que ha mandado construir en el lote número 18-A del plano SWO-33989, PCS-882, y la contrademanda, tasando las costas procesales en contra de aquéllos.

Aparece de autos que el apelado era dueño debidamente inscrito de los lotes números 1 al 18, inclusive, del plano de consolidación y subdivisión PCS-882, siendo dichos lotes porciones de los lotes números 901, 902, 2053, 2059, 3210 y 4351 de la medición catastral de Pasay, G. L. R. O. Cad. Record Número 1356, constando su título como tal en el Certificado de Transferencia de Título Número 40939 de la Oficina del Registro de Propiedad de la Provincia de Rizal, el cual número se cambió con el 228 al organizarse la Ciudad de Rizal, ahora Ciudad de Pasay (exh. L). Con motivo de la venta hecha por el apelado a favor del apelante Ernest Berg el 26 de Junio de 1943, este certificado de título quedó parcialmente cancelado con respecto a los lotes números 3, 12, 13, 14, 15, 16, y 17 por los cuales se expidió

a favor de dicho apelante el certificado de transferencia de título exhíbito K fechado el 28 de Junio de 1943. Al anotarse esta cancelación parcial al dorso del exhíbito L, aparece lo siguiente: "The corresponding certificate of title for Lot No. 18–A to be issued upon the submission of a duly approved subdivision plan, preliminary registration with respect to said lot having been applied for by the atty. of the vendee." (exh. L–2.) Este exhíbito K se canceló totalmente y, en su lugar, se expidió el Certificado de Transferencia de Título Número 1178 (exh. J) del Registro de Propiedad de la Ciudad de Rizal (Pasay) a favor de Bagumbayan Realty Company, a la cual vendió Berg el Mayo 21, 1949 los lotes números 3, 12, 13, 14, 15, 16 y 17 (exh. I). Igualmente, por haber esta compañía traspasado todo su derecho, título, interés y participación sobre los mismos el 24 de Febrero de 1951 (exh. B) a favor de la apelante Arellano University, Inc., el exhíbito J se canceló y, en su lugar, se expidió a nombre de esta universidad el Certificado de Transferencia de Título Número 2213 de la Oficina del Registrador de Títulos de la Ciudad de Pasay (exh. A).

Los lotes consolidados se midieron originalmente con motivo del catastro de Pasay en los años 1928–1930 y el plano de su consolidación y subdivisión se levantó el Diciembre de 1939 (exh. 3). En este plano aparece que todos los lotes subdivididos tienen acceso a la Avenida Taft y Calle Buendía por medio de un lote no numerado que tiene la forma de una T y todas las características de una calle. Pero este exhíbito 3 no pudo haber servido de base para expedición del título Torrens exhíbito L, porque mientras en aquél no se enumeran más que 16 lotes, en éste se describen técnicamente 18, correspondiendo el núm. 17 a la parte de la propuesta calle que separa los lotes núms. 14 y 16, y el núm. 18 al resto de la mencionada propuesta calle que da salida a, y entrada en, la Avenida Taft y Calle Buendía. Además, el mismo Certificado de Transferencia de Título Núm. 228 (40939) habla de un plano de consolidación y subdivisión que se levantó el Febrero 8–14, 1940 el cual, sin embargo, no se encuentra en el fajo de los exhíbitos.

Como la propiedad que acabada de comprar la universidad apelante estaba cedida en arrendamiento por Bagumbayan Realty Company a Philippine Surplus Company, ésta vendió por la suma de ₱18,500.00 sus derechos arrendaticios y un edificio identificado en los exhíbitos F y G como "wooden bldg." (exhs. F–1 y G–1) a la nueva propietaria el 5 de Diciembre de 1951 (exh. N). De este modo, la institución docente envuelta en este litigio pudo comenzar la construcción de su imponente edificio de cemento concreto (exh. D), sin necesidad de esperar la expiración del plazo de arriendo. No consta cuando abrió sus aulas el

centro de enseñanza apelante, pero hacia el Junio de 1954 ya tenía unos 3,500 alumnos y 75 maestros o miembros de la facultad.

Los hechos que se acaban de relatar no están disputados. Sin embargo, mientras los apelantes sostienen que el apelado subdividió su masa de terrenos en la Ciudad de Pasay con el fin de venderlos en pequeños lotes; que por dicho motivo se tuvo que trazar y construir una calle, completa con curvas y canales de cemento, que los comunique con la Avenida Taft y Calle Buendía, la cual calle no puede legalmente cerrarse porque sobre él pesa una servidumbre de paso a favor de los lotes que son ahora de la propiedad de la universidad apelante; y que, no obstante esto, el apelado cerró con candado la puerta de hierro (steel matting) que da a la referida avenida y tapió la parte de dicha calle de la subdivisión que ahora se conoce como lote núm. 18–A, el cual se incluyó en la venta hecha por el apelado al apelante Berg el Junio 26, 1943, el apelado afirma que cuando, prácticamente presionado, vendió sus lotes núms. 3, 12, 13, 14, 15, 16 y 17 al apelante Berg, no incluyó en la venta el lote núm. 18–A que entonces no existía, sino sólo la parte de la calle de la subdivisión que separa los lotes núms. 13, 15 y 16 de los núms. 12 y 14, parte que se indentifica como exhíbito 3–C; que por no poder cumplir con los requisitos exigidos para la aprobación de una subdivisión, ésta tuvo que abandonarse y así, a excepción de la venta de lotes contiguos al apelante Berg, ya no vendió ningún otro lote a favor de otras personas; que la puerta principal de entrada desde la Avenida Taft a los edificios escolares de la corporación apelante es la misma puerta grande—tan grande que da paso a camiones grandes—abierta por Tan Li Po de la Philippine Surplus Company y se identifica como exhíbito 3 en la fotografía exhíbito E; y que si bien al principio, accediendo a las súplicas de la universidad apelante, abrió la puerta pequeña (exh. 4–a) que está al lado de la grande (exh. F–2) para dar entrada y salida a la Avenida Taft a los estudiantes y profesores de dicha institución docente, al final tuvo que cerrar dicha puerta y tapiar el tronco de la propuesta calle en forma de T porque la citada apelante violó el permiso dado, convirtiendo dicho tronco en campo de ejercicios militares de los estudiantes quienes tambien lo usaban ocasionalmente como su orinal, con grave perjuicio e incomodidad del apelado que tiene su casa residencial en el lote número 2.

Esta apelación se funda principalmente en las siguientes básicas proposiciones: (1) que habiendo ya vendido el lote número 18–A en cuestión al apelante Berg, el apelado ya no puede cercarlo sin convertirse en mero intruso o usurpador; (2) que habiendo el apelado subdividido su masa

de terrenos en pequeños lotes con el proposito de venderlos, necesariamente tenía que construir un camino que sirva de comunicación de dichos sublotes con alguna vía pública, siendo esto la razón de ser del lote número 18–A el cual no puede cerrarse por tener sobre el mismo los apelantes una servidumbre de paso, de conformidad con el artículo 541 del antiguo Código Civil, 624 del nuevo; y (3) que el juzgado *a quo* erró y gravemente abusó de su discreción al denegar la moción de transferencia del apelante Berg y de nueva vista de éste y de su co-apelante.

De estas tres básicas proposiciones, la que es de vital importancia es la que se refiere a la discutida inclusión del lote núm. 18–A en la escritura de venta otorgada por el apelado a favor del apelante Berg el 26 Junio de 1943; pues no teniendo éste objección de que su co-apelante Arellano University, Inc. usase dicho lote, como se ve por el hecho de que los dos hacen causa común en este asunto, es indiscutible que, en caso de resolverse que en realidad de verdad el tantas veces mencionado lote se vendió por el apelado juntamente con los lotes números 3, 12, 13, 14, 15, 16 y 17, ya no habría necesidad de resolver la otras cuestiones suscitadas en esta apelación.

Como se recordará, el apelante Berg realizó todos los esfuerzos posibles para introducir como prueba el original o algún duplicado autenticado del documento de venta del 26 de Junio de 1943 con el fin de demostrar que el lote núm. 18–A que se menciona en la anotación preventiva exhíbito L–2 y en el plano de subidivisión y descripción técnica exhíbitos C y C–1, respectivamente, de hecho se había incluido en el citado documento de traspaso. Pero sus esfuerzos resultaron vanos, porque el escribano del Juzgado del Primera Instancia de Manila que guarda los reports de los notarios públicos y los registradores de títulos de Manila, Pasay y Rizal, quienes fueron citados subpoena *duces tecum* a petición de dichos apelantes, no pudieron presentarlo debido al hecho de que no se encontraba en sus oficinas, indudablemente porque se habrá destruido durante la última guerra mundial. Sin embargo, dándose cuenta de la transcendental importancia del susodicho documento, la representación del apelante Berg continuó su búsqueda del mismo y, al encontrar un duplicado debidamente firmado el 26 de Junio de 1957 de entre los papeles de un viejo asunto del apelante Berg que estaba a cargo del abogado Alba J. Hill, los apelantes presentaron al día siguiente una moción jurada pidiendo la reapertura de la vista con el fin de introducir dicho duplicado como prueba suya, uniendo a su moción copia fotográfica del instrumento recientemente descubierto y un affidavit del abogado sobre las circunstancias de su hallazgo. Es de tenerse en cuenta que cuando esta moción se presentó el

Junio 27, 1957, así como cuando la oposición a la misma se archivó el Julio 11, 1957, la decisión apelada no se había dictado aún. Seguramente por este motivo, el juzgado inferior, en auto dictado el Julio 13, 1957, dió a los apelantes un plazo de cinco días para replicar dicha oposición, y al apelado tres días para contra-replicar. Los apelantes presentaron su réplica el Julio 18, 1957; pero el juzgado inferior, sin esperar la contra-réplica del apelado y sin antes resolver la moción de reapertura aludida, falló esta causa en la manera que se indica al comienzo de esta decisión. Al hacerlo, dicho juzgado indudablemente erró y abusó de su discreción. Era su deber resolver primeramente la moción de reapertura del juicio para cuya clara elucidación él había ordenado a las partes que presentaran sus argumentos por escrito, de la misma manera que un juzgado está obligado a resolver primero una moción de sobreseímiento antes de dictar su decisión sobre los méritos de un asunto (Saludes *vs.* Pajarillo y Bautista, 78 Phil. 754).

La moción que los apelantes titularon—erróneamente a nuestro juicio—como "Urgent Motion for New Trial", no es propiamente moción de nueva vista bajo la regla 37 de los Reglamentos del Juzgado; pues, como arriba se ha expuesto, se presentó antes de que la decisión apelada se haya dictado. Es más bién moción para la reapertura del juicio con el fin de presentar como prueba adicional el duplicado firmado del documento de venta recientemente descubierto y de este modo corregir y completar las pruebas previamente presentadas. Debió, por tanto, de haberse concedido en interés de la justicia.

"So, generally, additional evidence is allowed when it is newly discovered, or where it has been omitted through inadvertence or mistake, or where the purpose of the evidence is to correct evidence previously offered." (Moran I, p. 545, 2.a Ed.; 64, C. J., 160–163).

Pero, aún suponiendo que fuese una moción estrictamente de nueva vista bajo dicha regla, aparece claro y evidente que dicho duplicado puede y debe considerarse como prueba nuevamente descubierta; porque (a) se encontró después ya de cerradas las pruebas de ambas partes; (b) los apelantes desplegaron toda la diligencia necesaria para encontrarlo antes, tan es así que tuvieron que pedir citación subpoena *duces tecum* del escribano de Manila y de los registradores de títulos de dicha ciudad, de Pasay y de Rizal; y (c) es de tal naturaleza que podría alterar el resultado de esta causa si llegara a admitirse como prueba (Moran I, p. 511, Ed. de 1957). Dicha moción debió, por consiguiente, de haberse concedido porque cae perfectamente bajo las disposiciones del artículo 1, regla 37 arriba citada. Desde luego que las mociones de semejante naturaleza se dirigen principalmente a la discreción

del juzgado, pero esta discreción debe ejercerse sanamente y de conformidad con el espíritu de la ley (Combs *vs.* Santos).

"Petitions for new trial or relief from judgment on the ground of fraud, accident, mistake or excusable negligence are addressed to the discretion of the court. But the discretion meant sound discretion exercised in accordance with law. If a given case falls both within the letter and spirit of the rule providing for relief, a denial thereof would amount to abuse of discretion." (Bustamante *vs.* Alfonso, G. R. No. L–7778, Dec. 24, 1955).

Por tanto, se revoca la sentencia apelada y se ordena la devolución de esta causa al juzgado de origen con instrucciones de celebrar nueva vista para la presentación del duplicado repetidas veces mencionado del documento de venta fechado el Junio 26, 1943 y de las pruebas adicionales que las partes quieran aportar en apoyo de sus respectivas contenciones sobre la inclusión o no inclusión en la venta disputada del lote núm. 18–A objeto de este litigio, y de decidirla de nuevo en vista del conjunto de todas las pruebas aducidas. Sin especial pronunciamiento en cuanto al pago de las costas.

ASI SI ORDENA.

Dizon y *Peña, MM.*, están conformes.

Se revoca la sentencia y se devuelve la causa al Juzgado de origen para nueva vista.

[No. 22573-R. Abril 21, 1959]

EL PUEBLO DE FILIPINAS, querellante y apelado, *contra* MANUEL BONDOC *alias* VERMANDO BONDOC, acusado y apelante.

DERECHO PENAL; BIGAMIA; NO SE ADJUDICAN DAÑOS MORALES A LA OFENDIDA.—El Artículo 2219 del Código Civil de Filipinas autoriza la adjudicación de daños morales en los delitos de estupro, rapto, violacion, adulterio o concubinato, y otros actos lascivos, pero no en casos de bigamia. No existe, por consiguiente base legal para adjudicar daños a la ofendida en casos de bigamia.

APELACION contra una sentencia del Juzgado de Primera Instancia de Bulacan. Montesa, *J.*

Los hechos aparecen relacionados en la decisión del Tribunal.

Moscoso & Ponce, en representación del acusado y apelante.

El Procurador General Edilberto Barot, en representación del querellante y apelado.

CABAHUG, *M.:*

Procesado y hallado culpable del delito de bigamia, Manuel Bondoc fué sentenciado a sufrir una pena indeterminada de cuatro años y dos meses de prisión correccional a diez años de prisión mayor, con las consiguientes accesorias de la ley; a indemnizar a la ofendida Marina Mendoza en la suma de ₱5,000.00, sin prisión subsidiaria en caso de insolvencia; y a pagar las costas. No estando conforme con esta sentencia, el acusado apeló contra la misma alegando como razones para que la sentencia apelada se revoque, que el juzgado *a quo* erró al: (1) no considerar que el apelante se casó en segundas nupcias impulsado por una fuerza irresistible, o por un miedo insuperable de un daño igual o mayor; (2) al no acceder a su moción de transferencia, no obstante la gravedad del delito por el que está acusado; y (3) al no absolverle libremente.

El 18 de Abril de 1953 el apelante se casó civilmente con la denunciante Marina Mendoza ante el juez municipal de Manila, Honorable Crisanto Aragon (exhíbito A-1). Después de su casamiento, los dos vivieron juntamente como marido y mujer en San Francisco del Monte, Ciudad de Quezon habiéndoles nacido, como resultado de dicha convivencia, dos hijos. El año 1956 el apelante llevó a su esposa e hijos a San Fernando, Pampanga para que pasen allá algunos días de vacación, bajo el pretexto de que era muy caluroso en su vivienda en San Francisco del Monte, prometiendo recogerles a mediados de Febrero. Como el apelante no volviera a recogerles, Marina Mendoza le buscó y, después de ciertas pesquisas, se enteró de

que el apelante se había casado con Dodaila Manzano, usando el nombre de Vermando Bondoc, el Julio 9, 1956, ante el juez de paz de Baliwag, Bulacan, Honorable Avelino R. Joaquin (exhíbito A), motivo por el cual Marina Mendoza presentó la correspondiente denuncia el Abril 11, 1957.

Estos hechos no se niegan por el apelante quien, sin embargo, trata de justificar su enlace con Dodaila Manzano estando subsistente su matrimonio con Marina Mendoza, por el hecho de que no puede vivir armoniosamente con su primera mujer, porque ésta no sabe los quehaceres de la casa ni sabe cocinar; no hace más que charlar con los vecinos; se va con frecuencia a provincias con la excusa de dedicarse al comercio de ciertos artículos; recibe visitantes sin su permiso (del apelante); y ha puesto a éste en una situación embarazosa durante el bautismo de su primer hijo cuando no hizo caso a todos sus compadres (del apelante).

Aceptando como ciertos todos estos hechos, es indudable que ninguno de los mismos ni todos ellos juntos constituyen circunstancia justificativa para la comisión del delito de bigamia. El apelante no menciona cual es la fuerza irresistible que le ha compelido a casarse con Dodaila Manzano sin estar disuelto su anterior matrimonio con Marina Mendoza. Indudablemente, el apelante so refiere a su criminal deseo de conquistar el amor de ésta y de gozar de sus primicias carnales. El peligro que insinua como proviniente de los padres de Dodaila Manzano es imaginario y no es mayor que el gravísimo daño inferido a su legítima esposa e hijos y al Estado que está intensamente interesado en mantener la unidad de la familia. Admitiendo que los padres de Dodaila maltrataría o mataría al apelante si éste viviera meritalmente con su hija sin beneficio de un casamiento, el apelante hubiera podido evitar dicho peligro simplemente con desistir de su deseo de cometer el acto ilegal de convivir y yacer con otra mujer distinta de su legítima esposa.

No es verdad, como contiende el apelante durante su argumento oral, que no se ha probado la subsistencia de su primer matrimonio con Marina Mendoza. Ésta estuvo presente durante la vista para declarar—como en efecto declaró. No se puede, por ende, presumir que este matrimonio ya estaba disuelto con motivo de la muerte de la primera cónyuge cuando se celebró el segundo matrimonio del apelante con Dodaila Manzano. Tampoco se puede presumir que dicho matrimonio se había disuelto por divorcio, porque es bien sabido que éste no está autorizado por nuestras leyes existentes después de 1950. Y según opinión autorizada de nuestra Honorable Corte Suprema, la presunción a favor de la legalidad del segundo matri-

monio se basa sólamente en estas dos causas que han quedado completamente destruidas por las circunstancias que se acaban de mencionar (Son Cui *vs.* Guepangco, 22 Phil. 216; Sy Joc Lieng *vs.* Sy Quia, 16 Phil. 137). Además, el mismo apelante admite la subsistencia de su anterior enlace con la parte agraviada y de la ilegalidad de su acto de casarse con Dodaila Manzano, cuando él declaró:

"Court questioning:

Q It is wrong to marry again without first annulling the first marriage?
A I know.
Q Then why did you have to marry?
A Because I do not . . . she will not content without marriage. It is very dangerous specially from the parents of the second wife.
Q Is it not more dangerous to marry again?
A That depends on the court." (t.s.n., pp. 14–15).

Es elemental que la resolución de una moción de transferencia descansa en la discreción del juzgado. Aunque es verdad que esta discreción debe ejercerse de conformidad con la ley y de una manera sana y razonable, en esta causa no existe circunstancia alguna que demuestre que el juzgado inferior abusó de su discreción, sobretodo si se tiene en cuenta que el apelante admitió libremente los hechos probados por la prosecución. La transferencia de la vista para otra fecha posterior sólo hubiera servido para impedir la pronta administración de la justicia.

Como resultado de todo lo que se acaba de exponer al discutir y resolver los dos primeros errores apuntados, es claro que el juzgado inferior no erró al condenar al apelante como al comienzo de esta decisión se ha indicado.

Sin embargo, ninguna prueba se ha presentado durante la vista de esta causa sobre cualquier daño actual sufrido por la parte agraviada. No obstante esto, el juzgado *a quo* adjudicóla daños en la suma de ₱5,000.00, seguramente recordando que este Tribunal y el Tribunal Supremo adjudicaron daños a las ofendidas en casos de adulterio y violación [People *vs.* Sarte, CA–G.R. No. 17929–R, Oct. 18, 1957; People *vs.* Paulino et al., CA–G.R. No. 20287–R, Dec. 1958; People *vs.* De Guzman, 51 Phil. 105; People *vs.* Manguiat et al., 51 Phil. 406; People *vs.* Feliciano, 77 Phil. 572; People *vs.* Demetrio et al., 47 O.G. (Sup.) 23]. Pero si en dichos asuntos se adjudicaron daños, ello se debió indudablemente porque el artículo 2219 del Código Civil de Filipinas autoriza la adjudicación de daños morales en los delitos de estupro, rapto, violación, adulterio o concubinato, y otros actos lascivos, sin incluir en esta enumeración el delito de bigamia. No existe, por consiguiente, base legal para adjudicar aquí los daños de ₱5,000.00 arriba mencionados.

POR TANTO, con la eliminación de los daños adjudicados, por la presente se confirma la sentencia apelada, con las costas en contra del apelante.

ASI SI ORDENA.

Dizon y *Peña, MM.*, están conformes.

Se confirma la sentencia.

LEGAL AND OFFICIAL NOTICES

Courts of First Instance

[FIRST PUBLICATION]

REPUBLIC OF THE PHILIPPINES
COURT OF FIRST INSTANCE OF CEBU

CASE NO. 496.—*In re petition for Philippine citizenship, by* ARSENIO TAN

NOTICE OF PETITION FOR PHILIPPINE CITIZENSHIP

To the Honorable Solicitor General and Mr. Tumulak and Miel, attorney for the petitioner, and to all whom it may concern:

Whereas, a petition for Philippine citizenship pursuant to Commonwealth Act No. 473, as amended by Commonwealth Act No. 535, has been presented to this Court of First Instance of Cebu by Arsenio Tan who alleges that he was born in Calauag, Quezon on December 14, 1933; that he is a resident of 42–C España St. Cebu City; that his trade or profession is that of salesman in which he has been engaged since 1953; that he is single; that he is able to speak and write English and Visayan-Cebuano; citing Messrs. Atty. Mamerto Ma. Lumibaw, Claudio Canastra and Susano B. Maxilom; both citizens of the Philippines, as the witnesses whom the petitioner proposes to introduce in support of his petition;

Therefore, you are hereby given notice that said petition will be heard by this Court, on the 16th day of July, 1960 A. D., at 8:30 a.m.

It is hereby ordered that this notice be published once a week for three consecutive weeks in the *Official Gazette* and in the *Morning Times*, a newspaper of general circulation in the province/city of Cebu where the petitioner resides, and that such petition and this notice be posted in a public and conspicuous place in the office of the Clerk of Court.

Witness the Hon. Amador E. Gomez, Judge of the Court of First Instance of Cebu Branch II, this 14th day of November, in the year nineteen hundred and fifty-nine.

Attest: VICENTE A. MIRANDA
[42–44] *Clerk of Court*

REPUBLIC OF THE PHILIPPINES
COURT OF FIRST INSTANCE OF CEBU

CASE NO. 497.—*In re petition for Philippine citizenship by* LIM KA SION

NOTICE OF PETITION FOR PHILIPPINE CITIZENSHIP

To the Honorable Solicitor General and Mr. F. V. Borromeo and J. R. Gaboya, attorney for the petitioner, and to all whom it may concern:

Whereas, a petition for Philippine citizenship pursuant to Commonwealth Act No. 473, as amended by Commonwealth Act No. 535, has been presented to this Court of First Instance of Cebu by Lim Ka Sion who alleges that he was born in Kue Eh, China on May 14, 1921; or that he emigrated to the Philippines from Kue Eh, China on or about the 16th day of May, 1936, and arrived at the port of Manila, Philippines; that he is a resident of 76 Zulueta St., Cebu City; that his trade or profession is that of general merchant; that he is married; that his wife's name is Yao Siu Go, who was born in Manila, Philippines and now resides at 76–Zulueta St., Cebu City; that he has children, and the name, date and place of birth, and place of residence of each of said children are as follows: Yolanda Y. Lim So Kheng, January 12, 1952, Cebu City; Arthur Y. Lim Tiao King, August 15, 1953, Cebu City; Yvonne Y. Lim Bee Ling, January 11, 1955, and Ivan Y. Lim Ye Hian, October 19, 1956, Cebu City; that he is able to speak and write English and Cebu-Visayan dialect; that he filed his declaration of intention with the Department of Justice, on November 4, 1958; citing Messrs. Meliton C. Baladjay, Pedro T. Abella and Celestino R. Menchavez both citizens of the Philippines, as the witnesses whom the petitioner proposes to introduce in support of his petition.

Therefore, you are hereby given notice that said petition will be heard by this Court, on the 30th day of July, 1960 A. D., at 8:30 a.m.

It is hereby ordered that this notice be published once a week for three consecutive weeks in the *Official Gazette* and in the *La Prensa*, a newspaper of general circulation in the province/city of Cebu where the petitioner resides, and that such petition and this notice be posted in a public and conspicuous place in the office of the Clerk of this Court.